

Sheet 8

Base Contract and Optional Extensions
Estimated Pass-Through Cost Summary

Item #	Description of Items	Total Annual Cost (\$)
BASE CONTRACT		
1	Year 1 of Operations	
2	Year 2 of Operations	
3	Year 3 of Operations	
4	Year 4 of Operations	
5	Year 5 of Operations	
Total Base Contract Cost (Operation Years 1-5)		\$ -
OPTIONAL EXTENSIONS		
6	Option Term 1 - Year 6 of Operations	
7	Option Term 1 - Year 7 of Operations	
8	Option Term 1 - Year 8 of Operations	
Total Option Term 1 Cost (Operation Years 6-8)		\$ -
9	Option Term 2 - Year 9 of Operations	
10	Option Term 2 - Year 10 of Operations	
11	Option Term 2 - Year 11 of Operations	
Total Option Term 2 Cost (Operation Years 9-11)		\$ -
Total Optional Extensions Cost (Operation Years 6-11)		\$ -
Total Base and Optional Extensions Cost (Operation Years 1-11)		\$ -

Sheet 9
Milestone Payment Schedule

A. Payments for System Costs (Excluding Hardware, Equipment and Off-the-Shelf Software)				
Payment Number	Payment Milestone	% Paid	Cum % Paid	\$ -
A-1	Notice to Proceed (Mobilization)	5.00%	5.00%	\$ -
A-2	Baseline Project Management Plan, Software Development Plan and Quality Assurance Plan Approved	5.00%	10.00%	\$ -
A-3	Requirements Traceability Matrix Approved	5.00%	15.00%	\$ -
A-4	System Detailed Design Document Approved	8.00%	23.00%	\$ -
A-5	Approval of all Remaining BOS Design, Implementation, Transition, Training, Disaster Recovery, Maintenance Plans	5.00%	28.00%	\$ -
A-6	Operations Plan, Staffing and Human Resources Plan, Reporting and Reconciliation Plan and SOPs Approved	5.00%	33.00%	\$ -
A-7	Master Test Plan Approved	4.00%	37.00%	\$ -
A-8	Software Walkthrough and Update of RTM Approved	4.00%	41.00%	\$ -
A-9	Unit Testing Approved	4.00%	45.00%	\$ -
A-10	System Integration Testing Approved	4.00%	49.00%	\$ -
A-11	User Acceptance Testing Approved	5.00%	54.00%	\$ -
A-12	Regression Testing Approved	3.00%	57.00%	\$ -
A-13	Approval of all Training Materials and Manuals	3.00%	60.00%	\$ -
A-14	Training Completed	4.00%	64.00%	\$ -
A-15	Onsite Installation and Commissioning Testing (includes updated SDDD, traceability matrix and business rules documents), Data Migration, Transition and Go-Live Testing Approved	6.00%	70.00%	\$ -
A-16	Acceptance of Operational Readiness Demonstration	5.00%	75.00%	\$ -
A-17	Go-Live	10.00%	85.00%	\$ -
A-18	Operational and Acceptance Testing Approved	10.00%	95.00%	\$ -
A-19	BOS Acceptance	5.00%	100.00%	\$ -

B. Payments for Hardware, Equipment and Off-the-Shelf Software				
Payment Number	Payment Milestone	% Paid	Cum.% Paid	\$ -
B-1	Ordering Approved by Agencies and Verified	10.00%	10.00%	\$ -
B-2	Verified Received	45.00%	55.00%	\$ -
B-3	Verified Installed in Final Configuration and Location	45.00%	100.00%	\$ -

EXHIBIT G: PROPOSED AGREEMENT

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PROPOSED AGREEMENT

OCTA NO. C-9-1177

AND RCTC NO. 19-31-059-00

AMONGST

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

AND

THIS AGREEMENT is effective as of this _____ day of _____, 20____
("Effective Date"), amongst the Orange County Transportation Authority, 550 South Main Street, P.O.
Box 14184, Orange, CA 92863-1584, a public entity of the State of California (hereinafter referred to as
"AUTHORITY") and the Riverside County Transportation Commission, 4080 Lemon Street, Riverside,
CA, a public entity of the State of California (hereinafter referred to as "COMMISSION"), together
collectively referred to as the "AGENCIES", and _____, _____, _____ (hereinafter referred to as
"CONTRACTOR") each individually known as "Party" and collectively known as the "Parties".

WITNESSETH:

WHEREAS, AGENCIES require assistance from CONTRACTOR to design, implement, install,
operate and maintain a Back Office System (BOS) and to operate a Customer Service Center (CSC) for
the 91 Express Lanes, with the mutual intent of AGENCIES of jointly operating said CSC and BOS as a
single, seamless Toll Facility from the customer's perspective, as further detailed herein; and

WHEREAS, the Work necessary to implement the Project cannot be performed by the regular
employees of AGENCIES; and

WHEREAS, CONTRACTOR has represented that it has the requisite personnel and experience,
and is capable of performing the Work; and

1 **WHEREAS**, CONTRACTOR wishes to perform the Work; and

2 **WHEREAS**, AUTHORITY and COMMISSON have entered into a Cooperative Agreement for
3 among other things, joint implementation, operation and maintenance of 91 Express Lanes BOS and
4 operation of the 91 Express Lanes CSC,

5 **WHEREAS**, in 2003 AUTHORITY purchased from the California Private Transportation Company
6 its interest in a Franchise Agreement with Caltrans to operate and maintain a toll collection system on
7 State Route 91 between State Route 55 and the Orange County/Riverside County line ("OCTA 91
8 Express Lanes") and has been doing so since that time; and

9 **WHEREAS**, the COMMISSON constructed and, pursuant to a Toll Facility Agreement with
10 Caltrans, as of 2017 operates and maintains a toll collection system on State Route 91 between Interstate
11 15 and County/Orange County line, and an Express Lane Connector between eastbound 91 and
12 southbound I-15 and between northbound I-15 and westbound 91("RCTC 91 Express Lanes"); and

13 **WHEREAS**, the OCTA 91 Express and the RCTC 91 Express Lanes are referred to, collectively,
14 in this AGREEMENT as the 91 Express Lanes.

15 **WHEREAS**, Procurement of the Work is authorized under Sections 130238 and 130240 et seq.
16 of the Public Utilities Code and AGENCIES' Procurement Policy and Procedures; and

17 **WHEREAS**, The Parties intend for this AGREEMENT to be a comprehensive agreement
18 obligating CONTRACTOR to perform all Work, as more particularly described in this AGREEMENT,
19 including all attached documents; and

20 **WHEREAS**, the AUTHORITY's Board of Directors authorized this AGREEMENT on_____;
21 and

22 **WHEREAS**, the COMMISSION's Board of Directors authorized this AGREEMENT on_____.

23 **NOW, THEREFORE**, it is mutually understood and agreed by AGENCIES and CONTRACTOR
24 as follows:

ARTICLE 1. COMPONENTS OF AGREEMENT/INTERPRETATION

A. AGREEMENT: This AGREEMENT, as defined in Exhibit A, Definitions and Acronyms, constitutes the complete and exclusive statement of the terms and conditions of the agreement between AGENCIES and CONTRACTOR for the Work and supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this AGREEMENT shall not affect the validity of other terms or conditions. Terms capitalized herein shall, unless otherwise defined herein, have the same meaning as set forth in Exhibit A.

B. AGREEMENT Interpretation: This AGREEMENT and each of the attached documents are all an essential part of the Parties agreement and should be interpreted in a manner which harmonizes their provisions. However, if an actual conflict exists, the following descending order of precedence shall apply:

1. AGREEMENT Amendments adopted in accordance with this AGREEMENT;
2. This AGREEMENT;
3. All Exhibits attached hereto,
4. RFP 9-1177, which is incorporated herein by reference
5. The Proposal dated July 12, 2019 which is incorporated herein by reference.

C. In the case of conflict, and notwithstanding the order of precedence, the most stringent requirement as determined by AGENCIES shall govern, unless otherwise agreed to in writing by AGENCIES.

D. A Party's failure to insist in any one or more instances upon any other Party's performance of any terms or conditions of this AGREEMENT shall not be construed as a waiver or relinquishment of that Party's right to such performance by the defaulting Party or to future performance of such terms or conditions and the defaulting Party's obligation in respect thereto shall continue in full force and effect. This AGREEMENT may be amended or modified only by mutual written agreement of the Parties. CONTRACTOR shall only commence Work covered by an Amendment after the Amendment is fully executed and notification to proceed has been provided by AGENCIES.

1 E. Where the AGREEMENT uses the term "AGENCIES", it refers to the AUTHORITY and
2 COMMISSION, collectively, unless the context clearly indicates that it is referring to either the
3 AUTHORITY or COMMISSION, individually. Where the AGREEMENT uses the term "AGENCY", it refers
4 to either the AUTHORITY or COMMISSION, unless the context clearly indicates that it refers to both
5 AGENCIES.

6 **ARTICLE 2. OPERATION AND ADMINISTRATION**

7 A. The Parties acknowledge that it is the intent and objective of AGENCIES to operate the 91
8 Express Lanes in both Orange County and Riverside County so that customers will experience a
9 seamless transition between the two facilities and will view the 91 Express Lanes as a single facility. The
10 CONTRACTOR agrees to cooperate in order to facilitate this intent and objective.

11 B. Notwithstanding the joint operation described in paragraph A of this Article 2, this
12 AGREEMENT will be separately administered by the AUTHORITY and COMMISSION as further set forth
13 and enumerated in this AGREEMENT.

14 **ARTICLE 3. AUTHORIZED DESIGNEES**

15 A. The Chief Executive Officer of AUTHORITY, or designee, shall have the authority to act for
16 and exercise any of the rights of AUTHORITY under this AGREEMENT.

17 B. The Executive Director of the COMMISSION, or his or her designee, shall have the authority
18 to act for and exercise any of the rights of the COMMISSION under this AGREEMENT.

19 C. In its letter of transmittal accompanying CONTRACTOR's Proposal, CONTRACTOR
20 designated *[name and title]* _____ as an officer of CONTRACTOR,
21 who shall be authorized to sign this AGREEMENT and any Amendments to this AGREEMENT and to
22 act for and make commitments on behalf of CONTRACTOR.

23
24 **ARTICLE 4. SCOPE OF WORK AND REQUIREMENTS**

25 A. CONTRACTOR shall perform the Work in accordance with the attached Exhibits B through
26 D, entitled "Scope of Work and Requirements", in a manner satisfactory to AGENCIES.

1 B. In performing this AGREEMENT, CONTRACTOR will be responsible for developing,
2 operating, and maintaining a BOS that handles the funds of others, documents and processes financial
3 transactions, and maintains the integrity of customer personal information and financial records. With
4 respect to its obligations under this paragraph B, the CONTRACTOR shall have a fiduciary duty to
5 AGENCIES, its customers and to the users of the BOS. The CONTRACTOR shall exercise its
6 responsibilities prudently and shall institute all appropriate mechanisms for the custody and administration
7 of funds and records.

8 C. CONTRACTOR shall provide all resources, personnel, Equipment, Software and supplies
9 necessary to perform the Work. CONTRACTOR shall provide the Work in a competent and professional
10 manner, in conformance with the highest industry standards, to the satisfaction of AGENCIES.
11 AGENCIES shall be entitled to full and prompt cooperation by CONTRACTOR in all aspects of the Work.
12 AGENCIES shall have the right to inspect the performance of the Work at any time, and CONTRACTOR
13 shall fully and promptly cooperate with AGENCIES in the execution of such inspections.

14 D. Exhibit B, Joint Scope of Work and Requirements, sets forth that joint Work to be provided to
15 both AGENCIES ("Joint Scope of Work and Requirements"), whether jointly or separately funded.

16 E. Exhibit C, AUTHORITY Only Scope of Work and Requirements, further sets forth that special
17 or additional Work of CONTRACTOR to be provided to the AUTHORITY only ("AUTHORITY Only Scope
18 of Work and Requirements"), and funded solely by the AUTHORITY. No Work shall be included under
19 the AUTHORITY Only Scope of Work and Requirements if such Work will negatively impact
20 CONTRACTOR's performance of the Joint Scope of Work and Requirements.

21 F. Exhibit D, COMMISSION Only Scope of Work and Requirements, further sets forth that
22 special or additional Work of CONTRACTOR to be provided to the COMMISSION only ("COMMISSION
23 Only Scope of Work and Requirements") and to be funded solely by COMMISSION. No Work shall be
24 included under the COMMISSION Only Scope of Work and Requirements if such Work will negatively
25 impact CONTRACTOR's performance of the Joint Scope of Work and Requirements.

26 **ARTICLE 5. CONTRACTOR'S PERSONNEL**

1 A. Non-Key Team Personnel:

2 1. The CONTRACTOR agrees that it will at all times employ, maintain and assign a
3 sufficient number of competent and qualified personnel and Subcontractors to perform the Work in a
4 timely manner.

5 2. CONTRACTOR warrants and represents that its staff personnel and
6 Subcontractors have the proper skill, training, background, knowledge, experience, rights, authorizations,
7 integrity, character and licenses necessary to perform the Work in a competent and professional manner.

8 3. At the request of AGENCIES, in their sole discretion, CONTRACTOR shall
9 promptly remove from assignment to the performance of Work any employee, Subcontractor, or any other
10 person performing Work hereunder. AGENCIES' request to remove an employee or Subcontractor from
11 this Project is specific only to Work under this AGREEMENT and shall have no bearing on
12 CONTRACTOR's decision to retain the employee or Subcontractor for work outside of this
13 AGREEMENT. AGENCIES shall bear no responsibility for any such decision by CONTRACTOR.

14 B. Key Team Personnel:

15 1. CONTRACTOR's Project Manager identified in the Proposal is a "Key Team
16 Personnel" and shall act as the primary point of contact in all matters on behalf of CONTRACTOR. The
17 Project Manager shall assign other individuals as contacts with regard to specific functional area of the
18 Work, subject to the Approval of AGENCIES.

19 2. Contractor shall provide the personnel listed below, which are hereby designated
20 as Key Personnel under this Agreement:
21
22
23
24
25
26

Name	Function

3. The Joint Scope of Work and Requirements identify job categories as Key Team Personnel for the AGREEMENT as shown in the Table above. CONTRACTOR identified Key Team Personnel assigned to this Project in its Proposal shall be Approved as part of the Project Management Plan. CONTRACTOR acknowledges that the award of this AGREEMENT to CONTRACTOR was based in significant part on the qualifications of such Key Team Personnel and on CONTRACTOR's representation that they will be made available to perform the Work to completion, which availability is a material term of this AGREEMENT. Key Team Personnel shall be required to work in the position indicated in the Proposal and in the Approved Project Management Plan.

4. No Key Team Personnel shall be removed or replaced by CONTRACTOR or have any change in function or any significant reduction in the level of commitment, without the prior written Approval of AGENCIES. Should AGENCIES determine that the list of Key Team Personnel does not include personnel essential to the successful performance of the Work, AGENCIES may require CONTRACTOR to add any existing job category to such list.

5. If AGENCIES become dissatisfied with the performance of any person designated as Key Team Personnel, AGENCIES shall notify CONTRACTOR in writing. Within fourteen (14) Business Days of receipt of such Notice, CONTRACTOR shall either propose a replacement person for evaluation and Approval by AGENCIES or present to AGENCIES a thirty (30) Calendar Day plan for correcting the incumbent's performance deficiencies. If AGENCIES reject the replacement person for

1 evaluation, then CONTRACTOR shall propose another replacement person within fourteen (14)
2 Business Days of such rejection, which process shall be followed until CONTRACTOR proposes a
3 replacement person acceptable to AGENCIES. If AGENCIES reject the plan of correction, or Approve
4 the plan of correction, but the incumbent's performance deficiencies are not corrected to AGENCIES'
5 satisfaction within thirty (30) Calendar Days of AGENCIES' Approval of the correction plan, then
6 CONTRACTOR shall, propose to AGENCIES a replacement person for evaluation and Approval by
7 AGENCIES within the time and manner set forth above. If CONTRACTOR is unable to provide a suitable
8 replacement for a total period of more than three (3) months from the date of AGENCIES' initial Notice to
9 CONTRACTOR, whatever the reason, the position shall be considered "Unavailable" and this shall trigger
10 the liquidated damages set forth in Article 18 C.2 or Article 18 C.3, depending upon the position.

11 6. Should the services of any Key Team Personnel become no longer available to
12 CONTRACTOR, CONTRACTOR shall, within one (1) Business Day from the day CONTRACTOR
13 becomes aware that the Key Team Personnel is or will no longer be available, provide Notice to
14 AGENCIES. The resume and qualifications of the proposed replacement shall be submitted to
15 AGENCIES for Approval as soon as possible, but in no event later than fourteen (14) Business Days after
16 CONTRACTOR becomes aware that the Key Team Personnel is or will not be available. AGENCIES
17 will respond to CONTRACTOR within seven (7) Business Days following receipt of these qualifications
18 concerning acceptance of the replacement. As used in this paragraph, "no longer available to
19 CONTRACTOR" means that the Key Team Personnel is no longer employed by CONTRACTOR or is
20 otherwise physically unable to perform as required by this AGREEMENT for reasons such as health, for
21 a period of more than thirty (30) Calendar Days. In the event a Key Team Personnel member was
22 rendered physically unable to perform, but later is physically able to perform, CONTRACTOR shall notify
23 AGENCIES and may return such Key Team Personnel to his or her position, subject to the AGENCIES'
24 reasonable Approval. CONTRACTOR inability to provide a suitable replacement for a period of more
25 than thirty (30) days whatever the reason, shall trigger the liquidated damages for Unavailability set forth
26 in Article 18.C.2 or 18.C.3, depending upon the position.

7. Reassignment by CONTRACTOR of a Key Team Personnel member without the express Approval of AGENCIES will automatically trigger liquidated damages for Unavailability set forth in Article 18.C. 2 or 18.C.3, depending upon the position.

ARTICLE 6. TERM OF AGREEMENT

A. Initial Term: This AGREEMENT shall commence upon the Effective Date, and shall continue in full force and effect for a period of up to seven (7) years through _____ ("Initial Term"), unless earlier terminated or extended as provided in this AGREEMENT. The Initial Term is composed of an Implementation Phase, and an Operations and Maintenance Phase, beginning at Go-Live, of five (5) years.

B. Extensions: AGENCIES, at their sole discretion, may elect to extend the Initial Term of this AGREEMENT up to an additional thirty-six (36) months ("Option Term 1"), and thereupon require CONTRACTOR to provide the Work and otherwise perform in accordance with the Scope of Work and Requirements at the rates set forth in Exhibit E, entitled "Contractor Price Proposal." AGENCIES, at their sole discretion, may elect to extend the Initial Term, as extended by Option Term 1, up to an additional thirty-six (36) months ("Option Term 2"), and thereupon require CONTRACTOR to continue to provide Work and otherwise perform in accordance with the Scope of Work and Requirements at the rates set forth in the Contractor Price Proposal. The Initial Term and any extensions thereof shall be referred to as "Term" in this AGREEMENT.

C. Extensions Not Constituting Waiver: AGENCIES' election to extend the Initial Term under Option Term 1 and/or Option Term 2, shall not diminish their right to terminate the AGREEMENT for AGENCIES' convenience or CONTRACTOR's default as provided elsewhere in this AGREEMENT. The maximum Term of this AGREEMENT shall be thirteen (13) years from the Effective Date.

ARTICLE 7. TIME AND SCHEDULE/COMPLETION DATES

A. Schedule and Submittals

1. CONTRACTOR's Submittal requirements and Submittal schedule shall be as set out in CONTRACTOR's Approved Project Management Plan and CONTRACTOR's Approved Baseline

1 Implementation Schedule, in accordance with the Scope of Work and Requirements.

2 2. AGENCIES' written Approval will be required for Submittals.

3 3. Within fifteen (15) Calendar Days of the Effective Date CONTRACTOR shall
4 submit a Baseline Implementation Schedule in a format acceptable to AGENCIES for AGENCIES' review
5 and Approval. The Preliminary Implementation Schedule, (Exhibit F), shall be the basis for the
6 development of CONTRACTOR's submitted Baseline Implementation Schedule. The Baseline
7 Implementation Schedule shall propose dates by which CONTRACTOR will (a) submit required permits,
8 documents, applications, and design; and (b) develop; deliver; install; test, and implement the required
9 BOS, including all necessary documents, Submittals, and Deliverables in support thereof. Sufficient
10 information shall be shown on the Baseline Implementation Schedule to enable proper control and
11 monitoring of the tasks and subtasks in accordance with the requirements set forth in the Joint Scope of
12 Work and Requirements.

13 4. Upon completion of the Baseline Implementation Schedule by CONTRACTOR to
14 the satisfaction of AGENCIES, AGENCIES will Approve such schedule, and it will thereafter be deemed
15 the Approved Baseline Implementation Schedule and constitute the schedule for the Submittals set forth
16 in this Article 7, paragraph A.1 and measured in accordance with paragraph 5 of this Article 7.

17 5. Progress of Work shall be measured against the Approved Baseline
18 Implementation Schedule and submitted to AGENCIES monthly in accordance with the Joint Scope of
19 Work and Requirements, until the Implementation Phase has been completed. Submission of monthly
20 progress updates to such schedule shall not release or relieve CONTRACTOR from full responsibility for
21 completing the Work within the time set forth in the Approved Baseline Implementation Schedule.

22 6. CONTRACTOR shall furnish sufficient resources to ensure the performance of
23 the Work in accordance with the Approved Baseline Implementation Schedule. If CONTRACTOR falls
24 behind in the performance of the Work as indicated in the Approved Baseline Implementation Schedule,
25 CONTRACTOR shall take such steps as may be necessary to ensure its performance in accordance with
26 the Approved Baseline Implementation Schedule. CONTRACTOR shall manage the risks to the

1 Approved Baseline Implementation Schedule to avoid any potential delays or make every effort to work
2 around any potential delays and mitigate the impact of delay.

3 7. CONTRACTOR shall be responsible for all delays in the Approved Baseline
4 Implementation Schedule, except delays in Approvals caused by Force Majeure events. However,
5 nothing in this paragraph relieves CONTRACTOR of its responsibility to provide complete and accurate
6 Submittals and Deliverables that meet the requirements of the Scope of Work and Requirements.
7 Submittals rejected by AGENCIES due to CONTRACTOR's failure to meet the requirements of the
8 Submittal or Deliverable or to address the previous written comments provided by AGENCIES are not
9 Force Majeure events and CONTRACTOR shall be held responsible for all associated delays.

10 8. If comments forms are established in the Project Management Plan to be used for
11 the resolution of questions and issues on a Submittal, the Submittal shall not be considered Approved
12 until all written comments are addressed to the satisfaction of AGENCIES. Such lack of Approval shall
13 be considered a rejection until the comments are fully resolved.

14 B. Guaranteed Completion Dates:

15 In executing this AGREEMENT CONTRACTOR is guaranteeing that the BOS will be fully
16 operational by the Guaranteed Completion Date, subject to any extensions thereof Approved by
17 AGENCIES in accordance with this AGREEMENT.

18 1. The 91 Express Lanes shall be fully operational and shall have achieved Go-Live,
19 as determined by AGENCIES, within five-hundred fifty (550) Calendar Days from Effective Date.

20 2. In addition to all other rights and remedies available to AGENCIES, if
21 CONTRACTOR fails to meet the Guaranteed Completion Date, as such Guaranteed Completion Date
22 may be extended pursuant to this AGREEMENT, CONTRACTOR shall be subject to liquidated damages
23 as specified in Article 18, Liquidated Damages.

24 C. Delays:

25 1. If at any time CONTRACTOR fails to complete any activity by the completion date
26 in the Approved Baseline Implementation Schedule, unless previously excused by AGENCIES in writing,

1 CONTRACTOR will be required, within seven (7) Calendar Days of AGENCIES' request, to submit to
2 AGENCIES a statement as to how it plans to return to compliance, including a recovery schedule if
3 directed by AGENCIES.

4 2. If CONTRACTOR fails or refuses to implement measures sufficient to bring its
5 Work back into conformity with the Approved Baseline Implementation Schedule, it shall be considered
6 an Event of Default and AGENCIES may exercise all rights provided herein, including permitting
7 CONTRACTOR to proceed under specified conditions required by AGENCIES.

8 3. No AGENCIES' review or Approval of a schedule submitted by CONTRACTOR
9 shall release or relieve CONTRACTOR from full responsibility for the accurate, complete and timely
10 performance of the Work, including the accuracy and completeness of the schedule, or any other duty,
11 obligation or liability imposed on CONTRACTOR by this AGREEMENT. AGENCIES' Approval of a
12 schedule shall not constitute a representation by AGENCIES that CONTRACTOR will be able to proceed
13 or complete the Work in accordance with the dates contained in said schedule.

14 **ARTICLE 8. START AND PHASES OF WORK**

15 A. Implementation Phase: The Implementation Phase shall commence upon Effective Date and
16 shall continue until Final Acceptance. CONTRACTOR shall not begin performing Work until the Effective
17 Date and shall not be entitled to any compensation for any Work performed or costs incurred prior to the
18 Effective Date.

19 B. Conditions precedent to AGENCIES executing the AGREEMENT are CONTRACTOR
20 furnishing the Form A, Performance Bond, Form B, Payment Bond, and applicable certificates of
21 insurance and endorsements thereof as required by this AGREEMENT. CONTRACTOR shall furnish
22 said documents within ten (10) Business Days after notification of award of this AGREEMENT from
23 AGENCIES.

24 C. Operations and Maintenance Phase: The Operations and Maintenance Phase shall
25 commence upon Go-Live of the 91 Express Lanes System and shall continue through the end of the
26 Term.

ARTICLE 9. MAXIMUM OBLIGATION

A. Notwithstanding any provisions of this AGREEMENT to the contrary, AUTHORITY and CONTRACTOR mutually agree that AUTHORITY's maximum cumulative payment obligation (including obligation for CONTRACTOR's profit) for all Work during the Initial Term shall be _____ Dollars (\$____.00) (the "AUTHORITY Maximum Obligation"). This is based on the AUTHORITY's portion of fixed and variable price components and includes, but is not limited to, all amounts payable by AUTHORITY to CONTRACTOR and its subcontracts, leases, materials and costs arising from, or due to termination of, this AGREEMENT and as further set forth in Article 10, Payment, unless agreed to and amended in writing by the AUTHORITY and CONTRACTOR.

B. Notwithstanding any provisions of this AGREEMENT to the contrary, COMMISSION and CONTRACTOR mutually agree that COMMISSION's maximum cumulative payment obligation (including obligation for CONTRACTOR's profit) for all Work during the Initial Term shall be _____ Dollars (\$____.00) (the " COMMISSION Maximum Obligation"). This is based on the COMMISSION's portion of fixed and variable price components and includes, but is not limited to, all amounts payable by COMMISSION to CONTRACTOR and its subcontracts, leases, materials and costs arising from, or due to termination of, this AGREEMENT and as further set forth in Article 10, Payment, unless agreed to and amended in writing by COMMISSION and CONTRACTOR.

ARTICLE 10. PAYMENT

A. Payments made for Implementation Phase Work by each AGENCY shall be in the amounts and percentages provided in Exhibit G, Milestone Payment Schedule. Variable payments made in the Operations and Maintenance Phase by each AGENCY shall be for Work performed for their own respective AGENCY only or where applicable, on a percentage basis for each AGENCY as identified in the Price Proposal sheets. In no event shall either the AUTHORITY or COMMISSION have any joint liability for payment to CONTRACTOR.

B. Payment of AUTHORITY Maximum Obligation: AUTHORITY shall pay to CONTRACTOR up to its Maximum Obligation amount, for CONTRACTOR's full and complete performance of its

1 obligations under this AGREEMENT on a fixed and variable unit price basis in accordance with the
2 following provisions set forth in paragraphs D through I of this Article 10.

3 C. Payment of COMMISSION Maximum Obligation: COMMISSION shall pay to CONTRACTOR
4 up to its Maximum Obligation amount, for CONTRACTOR's full and complete performance of its
5 obligations under this AGREEMENT on a firm fixed and variable unit price basis in accordance with the
6 following provisions set forth in paragraphs D through I of this Article 10.

7 D. Payments for Implementation Phase: Payments to CONTRACTOR for the Implementation
8 Phase will be as indicated in the CONTRACTOR Price Proposal, and Exhibit G, Payment Schedule.
9 Payments for BOS design, development, integration and testing, installation and other Deliverables will
10 be made using fixed prices for completed and Approved Deliverables as provided in the Payment
11 Schedule and the CONTRACTOR Price Proposal.

12 E. Payments for Maintenance: Payments for Maintenance will be made on a monthly basis, and
13 where applicable, based on fixed monthly prices and variable unit prices in accordance with the
14 CONTRACTOR Price Proposal. Adjustments to these payments may be made for CONTRACTOR
15 performance which falls below required Performance Measures as further set forth in the Scope of Work
16 and Requirements.

17 F. Payments for Operations: Payments for Operations will be made on a monthly basis, and
18 where applicable, based on fixed monthly prices and variable unit prices in accordance with the
19 CONTRACTOR Price Proposal. Adjustments to these payments may be made for CONTRACTOR
20 performance which falls below required Performance Measures as further set forth in the Scope of Work
21 and Requirements.

22 G. Full and Complete Compensation: All Work performed by CONTRACTOR in meeting the
23 requirements of the AGREEMENT shall be paid under one of the above payment methods, which shall
24 constitute full compensation for the Work, including but not limited to: (a) the cost of all insurance and
25 bond premiums, home office, job site and other overhead, and profit relating to CONTRACTOR's
26 performance of the Work; (b) the cost of performance of each and every portion of the Work (including all

costs of all Work provided by Subcontractor(s) and third party licenses and Software); (c) the cost of obtaining all governmental approvals; (d) all costs of compliance with and maintenance of such governmental approvals; (e) all risk of inflation, unless otherwise noted, currency risk, interest, and other costs of funds associated with the payment schedule for the Work as provided herein; and (f) payment of any taxes, duties, permits and other fees and/or royalties imposed with respect to the Work and any Equipment, materials, or labor included therein.

H. Schedule of Fixed Payment: The following schedule shall establish the fixed payment to CONTRACTOR by AGENCIES for the Implementation Phase set forth in the Scope of Work and Requirements.

IMPLEMENTATION PHASE PAYMENTS		
TYPE OF PAYMENT	AUTHORITY AMOUNT (\$)	COMMISSION AMOUNT (\$)
Fixed Price	\$0.00	\$0.00
Total Implementation Phase	\$0.00	\$0.00

I. Schedule of Fixed Payment and variable payment for Operations and Maintenance Phase: The following schedule shall establish the basis for payment to CONTRACTOR by AGENCIES for the Operations and Maintenance (O&M) phase set forth in the Scope of Work and Requirements. The schedule also shows the maximum obligation for each AGENCY for the combined Implementation and Operations and Maintenance Phases, established in paragraphs A and B of Article 9, Maximum Obligation.

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OPERATONS AND MAINTENANCE PHASE PAYMENTS		
TYPE OF PAYMENT	AUTHORITY AMOUNT (\$)	COMMISSION AMOUNT (\$)
Fixed Price	\$0.00	\$0.00
Variable Costs Based on Unit Prices	\$0.00	\$0.00
Total Operations and Maintenance Phase	\$0.00	\$0.00
MAXIMUM OBLIGATION ALL PHASES		
MAXIMUM OBLIGATION FOR IMPLEMENTATION AND O&M PHASES	\$0.00	\$0.00

J. Invoice Requirements: During the Implementation Phase CONTRACTOR shall separately invoice AGENCIES on a monthly basis for payments corresponding to the Work actually completed by CONTRACTOR and Approved by each of AGENCIES in accordance with the payment methods as set forth in paragraph D of this Article 10, Payment, and in the proportion for each AGENCY established in Exhibit G, Payment Schedule.

K. Following Go-Live (During the Operations and Maintenance Phase) CONTRACTOR shall separately invoice AGENCIES in accordance with the payment methods as set forth in paragraphs E and F of this Article 10. Such payments shall be monthly in arrears, beginning one month after Go-Live. Such monthly Operations and Maintenance invoices shall be subject to the Approval of AGENCY invoiced.

L. Deliverables and Work completed and Approved by AGENCY shall be documented in a monthly progress report prepared by CONTRACTOR, which shall accompany each invoice submitted by CONTRACTOR. At its sole discretion, AGENCY may decline to make full payment for any Deliverable until such time as CONTRACTOR has documented to AGENCY's satisfaction, that CONTRACTOR has fully completed all Work required under the invoice. AGENCY's payment in full for any task or Deliverable completed shall not constitute AGENCY's Final Acceptance of CONTRACTOR's Work under such invoice.

M. Retention: As partial security against CONTRACTOR's failure to satisfactorily fulfill all of its

obligations under this AGREEMENT, AGENCIES shall retain ten percent (10%) of the amount of each Implementation Phase invoice submitted for payment by CONTRACTOR. CONTRACTOR shall invoice AGENCIES for the release of the retention in its final invoices following Implementation Phase Final Acceptance in accordance with this Article 23. All retained funds shall be released by AGENCIES and shall be paid to CONTRACTOR within sixty (60) Calendar Days of payment of final Implementation Phase invoice, unless AGENCIES elect to audit CONTRACTOR's records in accordance with Article 44, Audit and Inspection of Records. If AGENCIES elect to audit, retained funds shall be paid to CONTRACTOR within thirty (30) Calendar Days of completion of such audit in an amount reflecting any adjustment recommended by such audit.

N. Submission of Invoices: Invoices shall be submitted by CONTRACTOR to AGENCIES' Accounts Payable offices. CONTRACTOR shall submit invoices electronically to AUTHORITY's Accounts Payable at vendorinvoices@octa.net and to COMMISSION's Accounts Payable office at AP@RCTC.org. AGENCY shall remit payment within thirty (30) Calendar Days of the receipt and Approval of a properly prepared invoice. Each invoice shall include the following information:

1. AGREEMENT No. (AUTHORITY:C-9-1911; COMMISSION: 19-31-059-00)
2. The specific phase for which payment is being requested;
3. BOS generated reports to validate quantities for the unit priced items, where applicable,
4. AGENCIES' Project Manager's Approval of the payment request.
5. Identification of the relevant line item price in the Price Proposal, and if milestone payment, identification of the milestone name, number, and amount in the Payment Schedule.
6. The time period covered by the invoice;
7. Total monthly invoice (including Project-to-date cumulative invoice amount) and retention for the time period covered by the invoice and cumulative retention held;
8. Monthly Progress Report and current Approved Baseline Implementation schedule during Implementation Phase or, Monthly Operations Report during the Operations and

1 Maintenance Phase;

2 9. Weekly certified payroll for personnel subject to prevailing wage requirements, if
3 applicable;

4 10. Certification signed by CONTRACTOR that a) The invoice is a true, complete and
5 correct statement of reimbursable costs and progress; b) The backup information included with the
6 invoice is true, complete and correct in all material respects; c) All payments due and owing to
7 Subcontractors and suppliers have been made; d) Timely payments will be made to Subcontractors and
8 Suppliers from the proceeds of the payments covered by the certification and; e) The invoice does not
9 include any amount which CONTRACTOR intends to withhold or retain from a Subcontractor or Supplier
10 unless so identified on the invoice; and

11 11. Any other information as agreed or requested by AUTHORITY and/or
12 COMMISSION to substantiate the validity of an invoice.

13 O. CONTRACTOR agrees to pay each Subcontractor for the satisfactory Work performed
14 under this Agreement, no later than thirty (30) days from the receipt of each payment CONTRACTOR
15 receives from AGENCIES for such Subcontractor Work. AGENCIES reserve the right to request the
16 appropriate documentation from CONTRACTOR showing payment has been made to the
17 Subcontractors and CONTRACTOR agrees to provide said documentation upon request. Any delay or
18 postponement of payment from the above referenced time frames may occur only for good cause
19 following written Approval by AGENCIES.

20 P. The AGENCIES may impose administrative sanctions for CONTRACTOR's failure to comply
21 with the payment provisions in this Article 10 without the prior written Approval of AGENCIES or to comply
22 with any lawful or proper direction from AGENCIES concerning the Work. Prior to imposing administrative
23 sanctions, the AGENCIES shall provide a written Notice to CONTRACTOR specifying the non-
24 compliance and that AGENCIES will exercise their administrative sanctions within five (5) Business Days
25 of the date of such Notice, unless and until such time as compliance is achieved. The administrative
26 sanctions shall be specified in the Notice and may include, but are not limited to, a penalty of two percent

(2%) of the invoice amount due per month for every month that payment is not made and/or suspending the processing of invoices or payment made for Work performed until compliance is achieved.

Q. These payment provisions in paragraphs O and P must be incorporated in all subcontract agreements issued by CONTRACTOR under this Agreement.

ARTICLE 11. NOTICES

All Notices hereunder and communications regarding the interpretation of the terms of this AGREEMENT, or changes thereto, shall be effected by delivery of said Notices (a) in person or by courier; (b) by depositing said Notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid; or (c) sent by electronic e-mail; provided that the recipient of the electronic Notice acknowledges receipt of such transmission by email. Personal or courier delivery shall be deemed given upon actual delivery to the intended recipient at the designated address. Mailed Notices shall be deemed given upon the date of the actual receipt as evidenced by the return receipt. Electronic e-mail Notice shall be deemed given upon the date the email is acknowledged as received by the recipient; provided that if acknowledgement is received after 5 p.m., delivery shall be deemed received as of 8 a.m. the following Business Day. Any Notice shall be sent, transmitted or delivered, as applicable, to the applicable Party or Parties at the following addresses:

To: Orange County Transportation Authority	To: Riverside County Transportation Commission	To: CONTRACTOR
550 South Main Street P.O. Box 14184 Orange, CA 92863-1584	4080 Lemon Street, 3rd Floor P.O. Box 12008 Riverside, CA 92502-2208	
ATTENTION: Ms. Reem Hashem Section Manager III	ATTENTION: Ms. Anne Mayer Executive Director	
Phone: (714) 560 - 5446	Phone: (951) 787-7141	
Email: rhashem@octa.net	Email: amayer@rctc.org	

ARTICLE 12. INDEPENDENT CONTRACTOR

A. CONTRACTOR's relationship to AGENCIES in the performance of this AGREEMENT is, and shall at all times remain as to AGENCIES, a wholly independent contractor.

B. CONTRACTOR's personnel performing services under this AGREEMENT shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of AUTHORITY. CONTRACTOR shall pay all wages, salaries, and other amounts due its employees in connection with this AGREEMENT and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

C. Except as expressly provided in this AGREEMENT, CONTRACTOR shall have no power to incur any debt, obligation, or liability on behalf of AGENCIES or otherwise act on behalf of AGENCIES as an agent. Neither AGENCIES nor any of their agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's employees. CONTRACTOR shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of AGENCIES.

D. CONTRACTOR shall defend, indemnify, and hold harmless AGENCIES with respect to any claims, causes of action, suits, judgements, liabilities, or legal or administration proceeding (collectively, "Claims") which arise out of (i) any assertion, whether by CONTRACTOR, any of its employees or Subcontractors, any public employee retirement system, or any local, state or federal agency, that CONTRACTOR or any of its Subcontractors or employees are in an employer-employee relationship with AGENCIES and thus, entitled to any compensation or benefits provided by AGENCIES to their own employees, including, but not limited to, benefits provided by AGENCIES under applicable Workers' Compensation laws, public employee retirement laws, Family Medical Leave Act, vacation, sick leave, etc.; (ii) any employment claims related to wages, hours, or employment terms and conditions raised or brought by any personnel CONTRACTOR has engaged to perform Work under this AGREEMENT; or (iii) failure of CONTRACTOR, or any of its employees or Subcontractors, to abide by applicable state and

1 federal employment laws including, but not limited to, anti-harassment and anti-discrimination
2 obligations. In addition to any other remedies it may have, AGENCIES shall have the right to offset
3 against the amount of any payments due to CONTRACTOR under this AGREEMENT any costs or
4 liabilities AGENCIES have incurred or will be reasonably expected to incur, due to CONTRACTOR's
5 failure to defend, indemnify and hold harmless AGENCIES as required in this paragraph.

6 E. CONTRACTOR agrees to pay all required taxes on amounts paid to CONTRACTOR under
7 this AGREEMENT, and to indemnify and hold AGENCIES harmless from any and all taxes, assessments,
8 penalties, and interest asserted against AGENCIES by reason of the independent contractor relationship
9 created by this AGREEMENT. In the event that AGENCIES are audited by any Federal or State agency
10 regarding the independent contractor status of CONTRACTOR and the audit in any way fails to sustain
11 the validity of a wholly independent contractor relationship between AGENCIES and CONTRACTOR,
12 then CONTRACTOR agrees to reimburse AGENCIES for all costs, including accounting and attorney's
13 fees, arising out of such audit and any appeals relating thereto.

14 **ARTICLE 13. BONDS**

15 A. All bonds required by this AGREEMENT shall be issued by sureties authorized to do business
16 in the State of California with an A.M Best Rating of A-, Class VIII, or better, or as otherwise Approved by
17 AGENCIES in their sole discretion, referred to hereinafter as "Eligible Surety". Notwithstanding any other
18 provision set forth in this AGREEMENT, performance by a surety of any obligations of CONTRACTOR
19 shall not relieve CONTRACTOR of any of its obligations under this AGREEMENT.

20 B. As partial security against CONTRACTOR's failure to satisfactorily fulfill all Work and
21 obligations under this AGREEMENT, CONTRACTOR shall submit and keep in place until Go-Live and
22 CONTRACTOR provision of applicable Operations and Maintenance Bond as described in paragraphs
23 C and D of this article below, a Performance Bond and Payment Bond referred to hereinafter as "Bonds"
24 in the form, respectively, set forth in Forms J and K, and attached to this AGREEMENT. The Bonds shall
25 each be in the sum of one-hundred (100%) percent of the Total Fixed Price for the Implementation Phase
26 (not including pass-through costs), as shown in Sheet 1 of the CONTRACTOR Price Proposal entitled

1 Project Cost Summary (cell C5-BOS Implementation Cost). If the Total Fixed Price for the Implementation
2 Phase is increased in connection with an Amendment, AGENCIES may, in their sole discretion, require
3 a corresponding increase in the amount of the Bonds or new Bonds covering the Amendment.

4 C. An Operations and Maintenance Bond referred to hereinafter as "O&M Bond" shall be
5 required in the form of Form C, attached to this AGREEMENT, as a condition of Go-Live. The
6 Implementation Phase Performance and Payment Bonds shall not be released until the O&M
7 Performance and Payment Bonds for the O&M phase are in place. The initial bonding level for the O&M
8 Phase shall be provided at one-hundred (100%) percent of Years 1 to 3 of total O&M costs (not including
9 pass-through costs), as shown on CONTRACTOR Price Proposal Sheet 4, Projected Bond Amounts
10 Table (cell C25).

11 D. O&M Bonds (not including pass through costs) may be renewed each year at the anniversary
12 date of Go-Live through the end of the Term. For subsequent years after the first year of Operations and
13 Maintenance, the renewed O&M Bonds shall be submitted to AGENCIES at least fifteen (15) Business
14 Days prior to the anniversary date of Go-Live. Upon Approval thereof, AGENCIES will release the prior
15 year's Bonds.

16 E. The value of the O&M bonds for years 2 through 5 and shall be determined as follows:

- 17 1. Year 2 O&M bonds = Estimated total combined cost of O&M for years 2 and 3 (not
18 including pass through costs) as shown on Sheet 4, Projected Bond Amounts table
19 (cell C26).
- 20 2. Each of Years 3 through 5 O&M bonds = Estimated cost of total combined cost of
21 O&M for upcoming year only as provided on Sheet 4, Project Bond Amounts Table
22 for the respective upcoming year (cells C27, C28, or C29 as applicable).

23 F. The estimated value of the O&M costs for any given year with regard to bonded amount shall
24 be based on the value presented in the CONTRACTOR Price Proposal for total O&M costs for the
25 referenced year(s) as provided in paragraph E of this article (not including pass-through costs), as
26 adjusted for any Approved changes orders that have affected these Price Proposal cells and any updates

1 in the estimated O&M volumes for the year(s) provided by AGENCIES at their sole determination.

2 G. If any Bond previously provided becomes ineffective, or if the Eligible Surety that provided the
3 Bond no longer meets the AGREEMENT requirements, CONTRACTOR shall provide a replacement
4 Bond in the same form issued by an Eligible Surety within five (5) Business Days of CONTRACTOR's
5 knowledge of same. CONTRACTOR shall provide Notice to AGENCIES promptly following such Bond
6 being rendered ineffective or when such Bond's surety is no longer an Eligible Surety, in no case later
7 than three (3) Business Days thereafter.

8 H. Additionally, the Performance Bond shall meet the following requirements:

9 1. Identify AGENCIES and AGREEMENT Nos. C9-1177 (AUTHORITY) and 19-31-
10 059-00 (COMMISSION) for which the Performance Bond is provided;

11 2. Upon written Notice by AGENCIES that CONTRACTOR has defaulted under this
12 AGREEMENT, the Eligible Surety will have ten (10) Business Days to make a determination on the
13 claim and to notify AGENCIES accordingly.

14 **ARTICLE 14. INDEMNIFICATION**

15 A. CONTRACTOR shall indemnify, defend and hold harmless AUTHORITY, COMMISSION,
16 Caltrans, and their officers, directors, employees and agents, (hereafter, the "Indemnitees") from and
17 against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement)
18 for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by
19 the negligent acts, omissions or willful misconduct by CONTRACTOR, its officers, directors, employees,
20 agents, Subcontractors or Suppliers in connection with or arising out of the performance of this
21 AGREEMENT. In addition to any other defense and indemnity obligations that CONTRACTOR has
22 assumed under this AGREEMENT, CONTRACTOR shall defend, indemnify and hold harmless the
23 Indemnitees from and against any and all liabilities, actions, suits, claims, and legal expenses, including
24 attorneys' fees, which arise out of any claim asserting a cause of action for trespass, inverse
25 condemnation or any other unlawful entry onto property by CONTRACTOR, its Subcontractors, agents
26 or employees. Any monies owed may be deducted from any monies due or to become due to

CONTRACTOR hereunder or under any other agreement between CONTRACTOR and AGENCIES.

B. Intellectual Property

1. CONTRACTOR shall indemnify, defend, and hold harmless Indemnitees from and against any and all claims, causes of action, suits, legal or administrative proceedings, including any judgments, interest, settlement amounts, losses, damages (statutory or actual), reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from Indemnitees ("Claim(s)"), by reason of any such Claim arising out of or relating to any actual or alleged infringement of any intellectual property rights by any Intellectual Property, including without limitation Project Intellectual Property, alone or as incorporated into the Project, or any Deliverable, Work, Service(s) and/or Software, including Upgrades or Updates, or use thereof.

2. Without limiting any other rights or remedies available to AGENCIES under the Agreement, in law and/or equity, in the event that any Intellectual Property, Equipment or Software employed to provide Work pursuant to this AGREEMENT, or portion thereof, is held to constitute an infringement and its use is or may be enjoined, the CONTRACTOR shall have the obligation, at its sole expense, at AGENCIES' option to do one or more of the following:

a. Require CONTRACTOR to, at its own expense, supply, temporarily or permanently, replacement the Intellectual Property, Equipment or Software of similar quality and function which is not subject to such an infringement or injunction;

b. Require CONTRACTOR to, at its own expense, remove all such Intellectual Property, Equipment and Software and refund to AGENCIES the cost thereof or equitably adjust compensation;

c. Take such steps as is necessary to ensure compliance by AGENCIES with such injunction;

d. Modify, or require that the applicable Subcontractor or Supplier modify, the alleged infringing Intellectual Property at its own expense, without impairing in any respect the functionality or performance thereof that is non-infringing; and/or

1 e. Procure for AGENCIES, at CONTRACTOR's expense, the rights provided
2 under this AGREEMENT to use the infringing Intellectual Property, Equipment or Software.

3 3. CONTRACTOR shall be solely responsible for determining and informing AGENCIES
4 whether a prospective Supplier or Subcontractor is a party to any litigation involving Intellectual Property
5 infringement or misappropriation or any injunction related to thereto, or arising out of any Intellectual
6 Property, Equipment and/or Software provided hereunder. The CONTRACTOR shall enter into
7 agreements with all Suppliers and Subcontractors at its own risk. AGENCIES may reject any Intellectual
8 Property, Equipment or Software, which it believes to be the subject of any such litigation or injunction,
9 or if, in AGENCIES' judgment, use thereof does not meet the objectives of Work, restricts or impairs
10 AGENCIES' rights in any Intellectual Property, or be unlawful.

11 **ARTICLE 15. INSURANCE**

12 A. CONTRACTOR shall procure at its own expense and maintain during the Term of this
13 Agreement or longer as provided herein, insurance coverage as specified in this Article 15 or as otherwise
14 agreed to by the AGENCIES. CONTRACTOR shall provide the following insurance coverage:

15 1. Commercial General Liability, to include Completed Products/Completed
16 Operations, Independent CONTRACTORS', Contractual Liability, and Personal Injury, and Property
17 Damage with a minimum limit of \$5,000,000.00 per occurrence and \$10,000,000.00 general aggregate.

18 2. Automobile Liability to include owned, hired and non-owned autos with a minimum
19 combined single limit of \$1,000,000.00;

20 3. Workers' Compensation insurance as required by the State of California and
21 Employer's Liability Insurance. Employer's liability limits shall be no less than
22 \$1,000,000 each accident, each employee for bodily injury, and policy limit for bodily injury. The policy
23 shall be endorsed to waive the insurer's right of subrogation against the AUTHORITY and COMMISSION,
24 and their respective officers, directors, employees and agents;

25 4. Professional Liability with minimum limits of \$2,000,000.00 per claim. The
26 CONTRACTOR shall maintain professional liability coverage for a minimum of three (3) years after

1 expiration of the Term or other termination of this AGREEMENT;

2 5. Commercial Crime with limits no less than \$5,000,000 to include: Employee
3 dishonesty, Forgery & Alteration, Monies & Securities, Computer Crime; and

4 6. Technology Errors & Omissions- CONTRACTOR shall maintain technology errors
5 & omissions liability (or technology professional liability coverage) insurance, covering liability for all
6 professional products and Work performed, including liabilities arising from acts, errors or omissions in
7 rendering computer or information technology services including 1) systems analysis 2) systems
8 programming 3) data processing 4) systems integration 5) outsourcing development and design 6)
9 systems design, consulting, development and modification 7) training services relating to computer
10 Software or Hardware 8) management, repair and maintenance of computer products, networks and
11 systems 9) marketing, selling, servicing, distributing, installing and maintaining computer Hardware or
12 Software 10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data
13 output with a limit not less than ten million dollars (\$10,000,000) per occurrence. This insurance shall
14 provide coverage for Software copyright liability and contractual liability. Such Technology E&O insurance
15 coverage may be met through or combined with the Professional Liability Insurance referenced in
16 paragraph 5 above, however, if combined then the coverage requirement for Technology E & O insurance
17 shall be equal or greater than the combined aggregate.

18 7. Cyber Liability Insurance. CONTRACTOR shall maintain Privacy and Network
19 Security (Cyber Liability) insurance covering liability arising from 1) hostile action, or a threat of hostile
20 action, with the intent to affect, alter, copy, corrupt, destroy, disrupt, damage, or provide unauthorized
21 access/unauthorized use of a computer system including exposing or publicizing confidential electronic
22 data or causing electronic data to be inaccessible 2) computer viruses, Trojan horses, disabling codes,
23 trap doors, back doors, time bombs drop-dead devices, worms and any other type of malicious or
24 damaging code 3) dishonest, fraudulent, malicious, or criminal use of a computer system by a person,
25 whether identified or not, and whether acting alone or in collusion with other persons, to affect, alter, copy,
26 corrupt, delete, disrupt, or destroy a computer system or obtain financial benefit for any party or to steal

1 or take electronic data 4) denial of service for which the insured is responsible that results in the
2 degradation of or loss of access to internet or network activities or normal use of a computer system 5)
3 loss of service for which the insured is responsible that results in the inability of a third-party, who is
4 authorized to do so, to gain access to a computer system and conduct normal internet or network activities
5 6) access to a computer system or computer system resources by an unauthorized person or persons or
6 an authorized person in an unauthorized manner with a limit not less than ten million dollars (\$10,000,000)
7 per occurrence. This insurance shall provide coverage for personal injury (including emotional distress
8 and mental anguish). Such Cyber Liability insurance coverage may be met through or combined with the
9 Professional Liability Insurance coverage referenced in subparagraph 5. above; however, if combined
10 then the coverage requirement for Cyber Liability insurance shall be equal or greater than the combined
11 aggregate.

12 B. Proof of such coverage, in the form of a certificate of insurance, a copy of the insurance policy
13 and/or an insurance company issued policy endorsement shall be provided to AGENCIES. Proof of
14 insurance coverage and endorsements evidencing the requirements for additional insureds must be
15 received within ten (10) Business Days after notification of award of this AGREEMENT from AGENCIES.
16 Such insurance shall be primary and non-contributory to any insurance or self-insurance maintained by
17 AGENCIES. AGENCIES reserve the right to request certified copies of all related insurance policies.

18 C. CONTRACTOR shall include on the face of the Certificate of Insurance the AGREEMENT
19 Numbers (AUTHORITY Agreement No. C-9-1177 and COMMISSION Agreement No. 19-31-059-00) and
20 OCTA's Contract Administrator's Name, Reem Hashem, Section Manager III.

21 D. Indemnitees must be named as additional insureds on Commercial General Liability and
22 Automobile Liability Certificates and on the insurance policy endorsement with respect to performance
23 hereunder.

24 E. CONTRACTOR shall also include in each subcontract the requirement that Subcontractors
25 shall maintain appropriate insurance coverage in the amounts as required by CONTRACTOR and include
26 the Indemnitees as additional insureds on general and automobile liability policies. Such coverage shall

1 be in effect at all times that a Subcontractor is performing Work under the Contract. The CONTRACTOR
2 shall have responsibility to enforce Subcontractor compliance with these or similar insurance requirements
3 provided that CONTRACTOR shall upon AGENCIES' request provide acceptable evidence of insurance
4 for any Subcontractor. The CONTRACTOR shall assume all responsibility for risks or casualties of every
5 description, for any and all damage, loss or injury, to persons or property arising out of the nature of the
6 Services, including but not limited to the negligence or failure of its Subcontractors (as well as
7 CONTRACTOR's employees) to comply with this Agreement.

8 F. CONTRACTOR shall be required to immediately notify AGENCIES of any modifications or
9 cancellation of any required insurance policies.

10 G. CONTRACTOR shall at all times during the Term of this AGREEMENT maintain insurance in
11 such form as is satisfactory to AGENCIES, and will furnish AGENCIES with continuing evidence of
12 insurance as provided below. All insurance policies shall be issued by companies licensed to do business
13 in the State of California, with an A.M. Best Rating of A-, Class VII, or better, or as otherwise Approved
14 by AGENCIES. CONTRACTOR shall at all times comply with the terms of such insurance policies, and
15 all requirements of the insurer under any such insurance policies, except as they may conflict with existing
16 California laws or this AGREEMENT.

17 H. CONTRACTOR shall provide AGENCIES with certificates showing the required coverage to
18 be in effect and a copy of the insurance policy or endorsements evidencing the requirements for the
19 additional insureds. Such policies shall provide that the insurance shall not be materially modified or
20 cancelled except upon thirty (30) Calendar Days prior written Notice to AGENCIES. Copies of all
21 insurance policies and endorsements shall be provided to AGENCIES upon request.

22 I. AGENCIES reserve the right to review all insurance coverage and amounts of insurance
23 coverage on an annual basis and to require CONTRACTOR to adjust the insurance coverage and
24 amounts of insurance coverage based on industry standards for contracts of this size and type.
25 CONTRACTOR shall timely pay all premiums and deductibles when due for all insurance coverage
26 required herein. The above insurance shall not contain a self-insurance retention (SIRs) unless Approved

1 by AGENCIES.

2 J. Pertaining to the above paragraphs regarding professional liability, technology errors and
3 omissions, and cyber liability insurance, if coverage is written on a claims made basis, such insurance
4 shall be maintained in force at all times during the Term and for a period of three (3) years thereafter for
5 Work completed during the Term. Additionally, if a sub-limit applies to any elements of coverage, the
6 policy endorsement evidencing the coverage above must specify the coverage section and the amount
7 of the sub-limit.

8 K. Providing and maintaining adequate insurance coverage described herein is a material
9 obligation of CONTRACTOR and is of the essence for this AGREEMENT. The limits of coverage under
10 each insurance policy maintained by CONTRACTOR shall not be interpreted as limiting
11 CONTRACTOR's liability and obligations under the AGREEMENT.

12 L. Subcontractors' Insurance. CONTRACTOR shall either require each Subcontractor to obtain
13 and maintain Workers' Compensation Insurance, Commercial General Liability, Business Automobile
14 Liability and Professional Liability coverage similar to those required above in this section for
15 CONTRACTOR, or any other coverage deemed necessary to the successful performance of the
16 AGREEMENT or cover Subcontractors under CONTRACTOR's policies. Such coverage shall be in effect
17 at all times that a Subcontractor is performing Work under the Contract. The CONTRACTOR shall have
18 responsibility to enforce Subcontractor compliance with these or similar insurance requirements; provided
19 CONTRACTOR shall upon AGENCIES' request provide acceptable evidence of insurance for any
20 Subcontractor. CONTRACTOR shall assume all reasonability for risks or casualties of every description,
21 for any and all damage, loss or injury, to persons or property arising out of the nature of the Work,
22 including but not limited to the negligence or failure of its Subcontractors (as well as CONTRACTOR's
23 employees) to comply with this AGREEMENT.

24 **ARTICLE 16. CHANGES**

25 A. , AGENCIES may, from time to time, amend this AGREEMENT, mutually order Work
26 suspension, add or deduct Work and/or make changes to Joint Scope of Work and Requirements of this

1 AGREEMENT hereinafter collectively referred to as "Joint Changes". In addition, AUTHORITY or
2 COMMISSION may, unilaterally, order additional Work solely required by the requesting AGENCY, or
3 amend or order Work suspension to, respectively, the AUTHORITY Only Scope of Work and
4 Requirements or the COMMISSION Only Scope of Work and Requirements (hereafter "Unilateral
5 Change").

6 B. Any such Joint Changes shall result in the issuance of an Amendment signed by the
7 AGENCIES and CONTRACTOR. Any Unilateral Change shall result in the issuance of a written Change
8 Order, order, or a written Amendment to the relevant separate Scope of Work and Requirements signed
9 by CONTRACTOR and the AGENCY ordering the Unilateral Change. No Joint Changes or Unilateral
10 Changes shall be compensated, or time extensions therefore permitted, except pursuant to an Approval.
11 Work suspension issued by AGENCIES for the Joint Scope of Work and Requirements or by an
12 AGENCY for a Unilateral Change, via a stop Notice, which results in an increase or decrease to the
13 maximum obligation due CONTRACTOR, will require an Amendment or Change Order.

14 C. If any such Joint Changes or Unilateral Changes ("Changes") cause an increase or decrease
15 in the price of this AGREEMENT or in the time required for its performance, CONTRACTOR shall
16 promptly notify AUTHORITY and/or COMMISSION (and if Change is a Unilateral Change, with a copy to
17 the AGENCY which did not order the Unilateral Change) thereof of any possible adjustment to price
18 and/or schedule, within ten (10) Calendar Days after the Change is ordered. However, nothing in this
19 clause shall excuse CONTRACTOR from proceeding immediately with the requested Change. No
20 Change shall be compensated, or time extension provided therefore, except pursuant to an Amendment
21 or Change Order.

22 D. In determining additional compensation to be paid for Change, the Parties shall use the labor,
23 Equipment, unit, and material costs and rates included in the Price Proposal for in preparing the
24 Amendment, including the Price Proposal's fully loaded labor rates for additional Work. CONTRACTOR
25 is required to use the overhead and profit rate identified in the Price Proposal Sheet 7. For Equipment,
26 and materials costs not covered or anticipated in the Price Proposal, a catalog or market price of a

1 commercial product sold in substantial quantities shall be used as the basis for propose costs.

2 E. If the cost of Change cannot be established on this basis or on the basis of prices set by
3 the AGREEMENT, law or regulation, CONTRACTOR shall submit detailed cost breakdowns, including
4 information on, Equipment, and materials costs and any other direct costs.

5 F. CONTRACTOR agrees that it will accept as full compensation for Change, a price mutually
6 agreed upon in writing, via an Amendment or Change Order.

7 G. If CONTRACTOR disagrees with the amount of compensation or time extension proposed by
8 the AGENCY in the Amendment or Change Order the AGENCY may issue a Work Directive.
9 CONTRACTOR shall submit a written dispute to AGENCY, (with a copy to AGENCY to which the dispute
10 does not apply) within fifteen (15) Calendar Days after the receipt of the Work Directive. Notwithstanding
11 CONTRACTOR's disagreement, CONTRACTOR shall proceed diligently with performance if directed by
12 AGENCY. The dispute shall state the points of disagreement and, if possible, the AGREEMENT
13 specification references, quantities and costs involved. If a written dispute is not submitted within the
14 above period, payment will be made as set forth in the Work Directive and such payment shall constitute
15 full compensation for all Work included therein or required thereby. An undisputed Work Directive will be
16 considered as executed Amendment or Change Order.

17 H. CONTRACTOR shall promptly notify AGENCIES in writing when it receives direction,
18 instruction, interpretation or determination from any source other than AGENCIES that may lead to or
19 cause change in the Work. AGENCY, to which the notification applies, shall Approve before
20 CONTRACTOR acts on said direction, instruction, interpretation or determination.

21 I. CONTRACTOR may initiate Change requests for Work it believes to be out of scope in
22 accordance with paragraph A of this Article 16. CONTRACTOR must follow the process identified in
23 this Article 16 for any CONTRACTOR initiated Change requests.

24 J. For avoidance of doubt, any Notices regarding a Change that is believed by
25 CONTRACTOR to be applicable to AGENCIES shall be sent to both AUTHORITY and COMMISSION
26 and any Notices regarding a Change that is believed by CONTRACTOR to be AUTHORITY only or

1 COMMISSION only, shall also be sent as a copy to AGENCY to which CONTRACTOR believes the
2 Change does not apply. Any changes to Joint Scope of Work and Requirements, must be Approved
3 by both AUTHORITY and COMMISSION.

4 **ARTICLE 17. DISPUTES**

5 A. All claims and other disputes between CONTRACTOR and AGENCIES or, if applicable, only
6 one of AGENCIES, arising under this AGREEMENT, shall be resolved in accordance with this Article 17,
7 Disputes, except those matters referenced in this Article 17, paragraph F below. All disputes shall be
8 decided in accordance with this AGREEMENT and general principles of State law. Questions of fact and
9 law may be considered in this dispute process; providing that nothing in this AGREEMENT shall be
10 construed as making the final decision of any AUTHORITY or COMMISSION official on a question of
11 law. The Parties shall diligently cooperate with one another and with the person(s) appointed to resolve
12 the dispute, and shall perform such acts as may be necessary to obtain a prompt and expeditious
13 resolution of the dispute.

14 B. Upon commencement of the dispute resolution process, the Parties shall first attempt to
15 resolve the dispute between AGENCY Project Manager(s) and CONTRACTOR's Project Manager. The
16 Parties shall meet in good faith within five (5) Business Days after the date that the written request for
17 dispute resolution is submitted and attempt to resolve it. There shall be at least one meeting to attempt
18 Project level resolution. The Project level negotiation may be continued upon the agreement of all Parties.
19 If the AGENCY's Project Manager and CONTRACTOR's Project Manager are able to resolve the dispute,
20 the resolution shall be set forth in writing. If such resolution results in a Change, an Amendment shall be
21 executed pursuant to Article 16, Changes. If the dispute cannot be resolved at the meeting or any
22 continuance thereof, the following shall apply:

23 1. For a dispute involving AGENCIES the dispute shall be submitted to each
24 AGENCY, using the respective processes identified for AUTHORITY only and COMMISSION only
25 disputes identified in items 2 and 3 of this paragraph B. AGENCIES will provide a joint written decision to
26 CONTRACTOR following completion of this process. A resolution of a dispute involving both AGENCIES

1 must be Approved by both AGENCIES.

2 2. For an AUTHORITY only dispute, the dispute shall be submitted to AUTHORITY's
3 Director of Contracts Administration and Materials Management (CAMM) within ten (10) Business Days,
4 of such meeting identified in paragraph B of this Article or continuance thereof. The Parties shall each
5 submit the following written information to the Director of CAMM: (a) an explanation of the nature of the
6 dispute; (b) the Party's position; (c) the dollar amount and/or schedule impact of the dispute; and (d) any
7 supporting documents the Party believes will aid the Director of CAMM in arriving at a decision. The
8 Director of CAMM will issue a written decision within ten (10) Business Days; provided that if no written
9 decision is submitted within that time, or any agreed upon extension thereof, the AUTHORITY will have
10 been deemed to have denied CONTRACTOR's position. The decision of the Director of CAMM shall be
11 the final and conclusive administrative decision of the AUTHORITY.

12 3. For a COMMISSION only dispute, the dispute shall be submitted to
13 COMMISSION's Executive Director within ten (10) Business Days, of such meeting identified in
14 paragraph B of this Article or continuance thereof, the Parties shall each submit the following written
15 information to the Executive Director (a) an explanation of the nature of the dispute; (b) the Party's
16 position; (c) the dollar amount and/or schedule impact of the dispute; and (d) any supporting documents
17 the Party believes will aid the Executive Director in arriving at a decision. The Executive Director will
18 issue a written decision within ten (10) Business Days; provided that if no written decision is submitted
19 within that time, or any agreed upon extension thereof, the COMMISSION will have been deemed to have
20 denied CONTRACTOR's position. The decision of the Executive Director shall be the final and conclusive
21 administrative decision of the COMMISSION.

22 C. If a dispute arises which must be resolved expeditiously in order to prevent serious damage
23 to revenues, person or property, or serious interference with Approved Baseline Implementation
24 Schedule, the disputing Parties shall make every effort to resolve such dispute immediately. If such
25 dispute cannot be resolved immediately, AUTHORITY and/or COMMISSION will issue a Work Directive,
26 in accordance with Article 16, Changes, and CONTRACTOR shall expeditiously proceed with the Work

1 Directive. Once the urgent aspects of the dispute have been resolved, the Parties may continue with the
2 remaining procedures for dispute resolution, in accordance with this Article 17, if necessary and to the
3 extent applicable.

4 D. Nothing in this AGREEMENT, however, shall be construed as making final the decision of
5 any AUTHORITY or COMMISSION official or representative on a question of law, which questions shall
6 be settled in accordance with the laws of the State of California.

7 E. If all other means of dispute resolution set forth above are not successful, any of the Parties
8 may commence an action using the following jurisdictions: The action will take place in Orange County
9 Superior Court for AUTHORITY-only disputes, Riverside County for COMMISSION-only disputes, and in
10 the sole determination of AGENCIES, either Orange County or Riverside County Superior Court for an
11 AGENCIES' dispute. In lieu of litigation the Parties may upon terms agreed to by the Parties, elect
12 mediation or arbitration, binding or otherwise. CONTRACTOR shall as a condition precedent to
13 commencing an action in Orange County Superior Court or Riverside County Superior Court for money
14 or damages file a claim pursuant to the Government Claims Act, Government Code sections 900 et seq.
15 For purposes of the claims filing requirement, the running of the time period in which a claim must be filed
16 shall be suspended until the AUTHORITY's final administrative decision by the Director of CAMM and/or
17 or the COMMISSION Executive Director, as applicable.

18 F. The dispute resolution procedures set forth in this Article shall not apply to the following:

- 19 1. Any matters that the AGREEMENT Documents expressly state are final, binding
20 or not subject to dispute resolution;
- 21 2. Any claim or dispute that does not arise under the AGREEMENT;
- 22 3. Disputes regarding compliance with Governmental Rules, liability or
23 indemnification;
- 24 4. Any claim for injunctive relief;
- 25 5. Any claim against an insurance company, including any Subcontractor dispute
26 that is covered by insurance;

6. Disputes regarding matters under the jurisdiction of Cal-OSHA;

7. Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in this Article do not apply, including any effort to interplead a party into such a lawsuit in order to make the procedures established in this Article applicable;

8. Any claim for, or dispute based on, remedies expressly created by statute;

9. Any dispute that is actionable only against a Surety; and

10. Any claim arising from this AGREEMENT to which a third party is a necessary party and has not agreed to participate in the process; provided that the Parties shall nevertheless proceed with resolution of disputes in accordance with this Article to the maximum extent possible.

ARTICLE 18. LIQUIDATED DAMAGES

A. If CONTRACTOR fails to: (1) complete the Work required for Go-Live by the Guaranteed Completion Date or any Approved extension thereof, or (2) provide Key Team Personnel in accordance with the AGREEMENT, or (3) meet the Operations and Maintenance Performance Measures of the AGREEMENT established in the Scope of Work and Requirements, the actual damage to AGENCIES will be difficult or impossible to determine. Therefore, the Parties have agreed to stipulate to the amount payable to AGENCIES as liquidated damages in order to fix and limit CONTRACTOR's costs and to avoid later disputes over what amount of damages are proper. The Parties agree that the amount of liquidated damages are reasonable in light of the anticipated or actual damage to AGENCIES and do not constitute a penalty. Liquidated damages may be assessed at AGENCIES' sole discretion as follows:

B. Go-Live Delays

In the event that CONTRACTOR has not completed the Work required for Implementation of the 91 Express Lanes BOS and achieved Go-Live by the Guaranteed Completion Date: \$7,500 per Calendar Day, commencing the day following the Guaranteed Completion Date.

C. Key Team Personnel

1. CONTRACTOR acknowledges that the award of this AGREEMENT by AGENCIES was based in significant part on the qualifications and experience of the Key Team Personnel

1 listed in CONTRACTOR's Proposal and representation that they would be available to perform the Work.

2 2. In the event that CONTRACTOR Project Manager or other Personnel identified in
3 Table below becomes Unavailable to perform the Work, subject to the conditions set forth in Article 5,
4 CONTRACTOR's Personnel, AGENCIES may assess CONTRACTOR liquidated damages for each
5 occasion of such Unavailability as follows:

6 Key Team Personnel Liquidated Damages

7

POSITION	LIQUIDATED AMOUNT
Project Manager – Implementation Phase	\$ 150,000
Project Manager - O&M Phase	\$150,000
Operations Manager	\$ 50,000
Installation Manager	\$ 25,000

12

13 3. In addition to the amounts payable for positions identified in the above table,
14 CONTRACTOR shall pay AGENCIES a further liquidated amount of \$20,000, if any other Key Team
15 Personnel is Unavailable.

16 4. The amounts payable under this Article 18 for Unavailability apply for each
17 occasion of Unavailability for each of the Key Team Personnel.

18 D. Failure to Meet Performance Measures

19 Performance Measures establish a minimum level of service for Operations and Maintenance
20 Phase Work. These Performance Measures include compliance with Security Standards identified in the
21 Scope of Work and Requirements, including but not limited to data security, payment card industry (PCI),
22 and Personally Identifiable Information (PII) standards.

23 E. Failure to meet such Performance Measures shall result in the assessment of liquidated
24 damages in the form of Adjustments as set forth in the Scope of Work and Requirements. These
25 adjustments shall result in a reduction of the amount of the monthly fee AUTHORITY and COMMISSION
26 would otherwise pay to CONTRACTOR for the Work. Standard reports shall be developed by
CONTRACTOR to measure whether the performance standards have been met. The' format and content

1 of such reports shall be Approved during the design and generated by the BOS and shall be run on a
2 scheduled basis by CONTRACTOR and provided to AUTHORITY and COMMISSION on a monthly
3 basis, unless another frequency is otherwise specified in the Scope of Work and Requirements or
4 otherwise directed by AGENCIES.

5 F. AGENCIES may deduct liquidated damages from any monies due or that may become due
6 to CONTRACTOR under the AGREEMENT. AGENCIES are not obligated, however, to make such a
7 deduction or to provide notice thereof. If such deducted monies are insufficient to recover the liquidated
8 damages owing, CONTRACTOR or CONTRACTOR's surety shall pay to AGENCIES any deficiency prior
9 to Final Acceptance of Implementation Phase or closeout of Operations and Maintenance Phase, as
10 applicable, or upon termination of this AGREEMENT.

11 G. The failure of AGENCIES to assess any liquidated damages authorized under this Article 18
12 shall not constitute a waiver of AGENCIES' right to assess such adjustments or liquidated damages at a
13 future date. Further, failure to impose liquidated damages does not constitute a waiver of
14 CONTRACTOR's obligations to perform in accordance with the AGREEMENT and Scope of Work and
15 Requirements.

16 H. Liquidated damages are separate and cumulative and are not in lieu of Actual Damages
17 covered under Article 19, Actual Damages.

18 **ARTICLE 19. ACTUAL DAMAGES**

19 A. During the Operations and Maintenance Phase, CONTRACTOR shall reimburse AGENCIES
20 for lost revenue which AGENCIES identify as having been lost due to the fault of CONTRACTOR. Lost
21 revenue includes, but is not limited to, such events as processing errors, lost transactions, lost images,
22 unprocessed transactions, lost data, revenue lost due to data security breach, and transactions that are
23 not able to be collected due to failures or delays in transaction processing. If actual data is available for
24 the affected time period, such data will be considered in the calculation of actual damages as applicable.
25 If AGENCIES do not have actual transactional, financial, or other relevant operational data from the
26 affected period, such actual damages shall be calculated based on a determination of a comparable

1 period made by AGENCIES, and shall consider the day, month, time of day, location, season, whether
2 the day is a weekday, weekend or Holiday, and such other factors as are reasonable. AGENCIES may
3 choose, in their sole discretion, to recover such lost revenue from CONTRACTOR by deducting such
4 amounts from payments otherwise due and owing from AGENCIES to CONTRACTOR.

5 B. In addition to other actual damages, CONTRACTOR shall be responsible for all additional
6 costs associated with any PII, PCI, data or security breach associated with CONTRACTOR's provision
7 of Work, including but not limited to, special mailings notifying customers of a mistake in their monthly
8 statements due to inaccurate reporting of information by CONTRACTOR and providing credit monitoring
9 services to customers.

10 **ARTICLE 20. RISK OF LOSS**

11 A. CONTRACTOR shall bear all risk of damage or loss to the BOS, Facilities, and/or Sites except
12 for damage and loss caused by the sole negligence or willful misconduct of AGENCIES or Force Majeure.
13 CONTRACTOR shall promptly replace the damaged or lost portions of the BOS at CONTRACTOR's cost
14 for which it bears all risk or when risk of damage or loss.

15 B. In the case of damage or loss that AGENCIES agree was caused by the sole negligence or
16 willful misconduct of AGENCIES, or Force Majeure, CONTRACTOR shall promptly replace the damaged
17 or lost portions of the BOS at CONTRACTOR's cost after such cost is pre-Approved by AGENCIES, and
18 submit the amount(s) thus expended to AUTHORITY and/or COMMISSION for reimbursement as a
19 clearly identified, separate item on its next invoice to AUTHORITY and/or COMMISSION. If risk of loss
20 is in dispute, CONTRACTOR shall nevertheless promptly replace the damaged or lost portions of the
21 BOS at CONTRACTOR's initial cost; provided that in doing so, CONTRACTOR does not waive any
22 remedies it may have under this AGREEMENT to later recover such costs.

23 **ARTICLE 21. DEFAULT**

24 **A. Default of CONTRACTOR:**

25 1. A default shall mean a material breach of this AGREEMENT by CONTRACTOR.
26 Without limiting the generality of the foregoing and in addition to those instances referred to elsewhere in

1 this AGREEMENT as a breach, a default shall include the following:

2 a. CONTRACTOR fails to timely remit or credit revenues due either of
3 AGENCIES pursuant to this AGREEMENT;

4 b. CONTRACTOR fails to timely deliver and/or maintain Deliverables to either of
5 AGENCIES, which Deliverables include, but are not limited to, all insurance, bonds or other performance
6 security required by this AGREEMENT or to maintain in force and effect any such insurance, bonds or
7 performance security;

8 c. CONTRACTOR fails to promptly perform the Work following the Effective
9 Date; to diligently perform the Work in accordance with the Approved Baseline Implementation Schedule;
10 suspends or otherwise ceases to perform the Work (excepting therefrom excused suspensions directed
11 by AGENCIES, or due to Force Majeure); or promptly resume performance of any Work which has been
12 suspended as directed by AGENCIES;

13 d. CONTRACTOR fails to perform the Work in accordance with this
14 AGREEMENT, including, but not limited to, the Scope of Work and Requirements;

15 e. CONTRACTOR fails to supply enough properly skilled workers or proper
16 materials to perform the Work required under this AGREEMENT;

17 f. CONTRACTOR fails to make prompt payment to Subcontractors or Suppliers
18 in accordance with this AGREEMENT within 30 Calendar Days from receipt of payment from AGENCIES,
19 absent a valid dispute between CONTRACTOR and its Subcontractors or Suppliers;

20 g. CONTRACTOR fails to make any payment due AGENCIES under this
21 AGREEMENT, including but not limited to, liquidated damages;

22 h. CONTRACTOR commences any suit or any suit is commenced against
23 CONTRACTOR, under any bankruptcy, insolvency or similar law to liquidate, reorganize or dissolve
24 CONTRACTOR, or which seeks the appointment of a receiver, trustee, custodian or other similar official
25 to attach, execute or such similar process for any substantial part of CONTRACTOR's assets; or
26 CONTRACTOR assigns the proceeds received from this AGREEMENT for the benefit of its creditors, or

1 it has taken advantage of any insolvency statute or debtor/creditor law or if CONTRACTOR's property or
2 affairs have been put in the hands of a receiver; or any of the foregoing events occurs with respect to any
3 Surety, which Surety is not promptly replaced by CONTRACTOR;

4 i. CONTRACTOR fails to obtain the Approval of AUTHORITY and/or
5 COMMISSION, as applicable, where required by this AGREEMENT;

6 j. CONTRACTOR fails to provide adequate assurances as required under
7 paragraph 2. below;

8 k. CONTRACTOR has failed in the representation of any warranties stated
9 herein;

10 l. Any person authorized to act on CONTRACTOR's behalf makes a statement
11 to any person authorized to act on the AUTHORITY's and/or COMMISSION's behalf, indicating that
12 CONTRACTOR cannot or will not perform any one or more of its obligations under this AGREEMENT;

13 m. CONTRACTOR has a pattern of repeated failures to provide the Work and
14 meet the Scope of Work and Requirements.

15 n. CONTRACTOR fails to remedy Pervasive Defects; or

16 o. The suspension or revocation of any license, permit, or registration
17 necessary for the performance of the CONTRACTOR's obligations under this AGREEMENT;

18 2. When, in the opinion of AGENCIES, reasonable grounds for uncertainty exist with
19 respect to CONTRACTOR's ability to perform the Work or any portion thereof, AGENCIES may request
20 that CONTRACTOR, within the time frame set forth in AGENCIES' request, provide adequate assurances
21 to AGENCIES, in writing, of CONTRACTOR's ability to perform in accordance with the terms of this
22 AGREEMENT. Until AGENCIES receive such assurances, AGENCIES may suspend all payments or
23 portions thereof to CONTRACTOR. In the event that CONTRACTOR fails to provide to AGENCIES the
24 requested assurances within the prescribed time frame, AGENCIES may:

25 a. Treat such failure as an Event of Default;

26 b. Resort to any remedy for breach provided herein or at law or equity, including,

1 but not limited to, taking over the performance of the Work or any part thereof either by itself or through
2 others;

3 c. Remove all technical documentation deposited with the Escrow Agent
4 pursuant to the Escrow Agreement executed in accordance with Article 25, Intellectual Property, and
5 Article 26, Intellectual Property Escrow with the purpose of competitively procuring any Equipment or
6 Software or providing any Work based on such documentation; and

7 d. Terminate CONTRACTOR's performance hereunder.

8 3. The enumeration in this Article or elsewhere in this AGREEMENT of specific rights
9 or remedies of AGENCIES shall not be deemed to limit any rights or remedies which AGENCIES would
10 have in the absence of such enumeration and no exercise by AGENCIES or failure to exercise of any
11 right or remedy shall operate as a waiver of any other of AGENCIES' rights or remedies not inconsistent
12 therewith or to stop AGENCIES from exercising such other rights or remedies.

13 B. Notice of Default - Chance to Cure:

14 If, in the determination of AGENCIES, a default has occurred, AGENCIES will notify
15 CONTRACTOR and, as applicable, surety by delivery of a Notice hereinafter referred to as "Default
16 Notice" specifying the default claimed, and advising CONTRACTOR that such default must be cured
17 as set forth therein or this AGREEMENT may be terminated. Prior to declaring an Event of Default,
18 AGENCIES shall allow CONTRACTOR to cure the default to AGENCIES' reasonable satisfaction
19 within fifteen (15) Calendar Days, or such shorter time if the default requires it; provided that
20 AGENCIES are not required to issue a Default Notice if there is a default which by nature cannot be
21 cured. Failure to provide a Default Notice shall not preclude AGENCIES from exercising other
22 available remedies short of termination. AGENCIES may extend the opportunity to cure beyond the
23 15-Calendar Day period if the default is one AGENCIES agree requires additional time to cure, so
24 long as CONTRACTOR has commenced curing such default and is effectuating a cure with diligence
25 and continuity during such 15-Calendar Day period, or extension thereof which AGENCIES prescribe.

26 C. Remedies in the Event of Default ; Notice of Termination for Cause.

1 1. If CONTRACTOR does not cure the default within the time prescribed or the
2 default is not subject to cure, AGENCIES may declare an Event of Default, which shall be in writing
3 and provided to CONTRACTOR, and, as appropriate the Surety. In addition to all other rights and
4 remedies under this AGREEMENT and/or the bonds, AGENCIES shall, upon declaration of an Event
5 of Default, have the right to terminate this AGREEMENT, in whole or in part, pursuant to issuance of
6 a Notice of Termination for Cause, specifying the effective date thereof and/or perform or cause to be
7 performed the Work or any portion thereof, which are required of CONTRACTOR. The Notice of
8 Termination for Cause may be provided concurrently with any written declaration of an Event of
9 Default. In exercising such rights, AGENCIES may immediately take possession of, and
10 CONTRACTOR shall deliver, all applicable Equipment, Software and data, and facilities that house
11 such items as AGENCIES may direct. AGENCIES shall also have the right to complete the Work with
12 CONTRACTOR's Subcontractors and CONTRACTOR shall assign such subcontracts as AGENCIES
13 direct. AGENCIES, as part of their right to complete the Work, may take possession of and use, and
14 CONTRACTOR shall be required to deliver to AGENCIES, any or all of the materials, plants, tools,
15 Equipment, Hardware, supplies and property of every kind, provided, purchased, maintained, leased,
16 owned, or rented by CONTRACTOR in performing the Work, including but not limited to all technical
17 specifications, drawings, source code, and object code placed into Escrow. AGENCIES may make
18 available such escrowed materials to third parties, along with third party licenses and Software, and/or
19 procure other materials, plant, tools, Equipment, and supplies for purposes of performing the Work.
20 AGENCIES may charge CONTRACTOR and CONTRACTOR shall be liable to AGENCIES for the
21 expense of said labor, materials, plant, tools, Equipment, supplies and property reasonably necessary
22 in performing or completing the Work.

23 2. If AGENCIES declare an Event of Default, CONTRACTOR shall be liable for
24 those damages provided herein resulting from the default, including but not limited to:

- 25 a. Losses as defined in Article 20, Risk of Loss;
- 26 b. The difference between the actual costs incurred by AGENCIES in

1 completing the Work and the compensation AGENCIES would otherwise have paid CONTRACTOR
2 under this AGREEMENT for completing such Work;

3 c. Liquidated damages,

4 d. Actual damages.

5 The CONTRACTOR shall remain liable for any other liabilities and claims related to
6 CONTRACTOR's default. All damages and costs may be deducted and paid out of any monies due
7 from AGENCIES to CONTRACTOR.

8 D. If an Event of Default occurs, CONTRACTOR and any Surety shall be jointly and severally
9 liable to AGENCIES for all losses and damages incurred by AGENCIES. Upon the occurrence of an
10 Event of Default and for so long as it occurs, AGENCIES may withhold all or any portion of further
11 payments to CONTRACTOR until the date that AGENCIES accept the Project as complete at which time
12 AGENCIES will determine if CONTRACTOR is entitled to any further payments. AGENCIES will deduct,
13 from any moneys due or which become due CONTRACTOR or its surety, all costs and charges incurred
14 by AGENCIES, including attorneys, accountants and expert witness fees and costs. If AGENCIES'
15 losses or damages exceed payments owing CONTRACTOR, then CONTRACTOR and its Surety shall
16 be liable and pay such amount to AGENCIES within ten (10) Calendar Days of AGENCIES' written
17 demand. If CONTRACTOR or its Surety fail to pay such demand within such timeframe, AGENCIES
18 may collect interest thereon at the lessor of 10% per annum or the maximum rate allowed under State
19 law from the date of the written demand.

20 E. In the event that it is later determined that the AGREEMENT was terminated upon grounds
21 which did not justify a termination for Event of Default, such termination shall be deemed a termination
22 for convenience pursuant to Article 22, Termination for Convenience.

23 F. Performance by Surety: Upon receipt of a demand from AGENCIES requiring Surety to
24 complete the Work, Surety shall diligently and promptly take charge of the Work and complete this
25 AGREEMENT pursuant to its terms at its own expense, receiving the balance of the funds due
26 CONTRACTOR, minus any permissible deductions under this AGREEMENT. In the event AGENCIES

undertake to complete the Work with its own forces or by way of contract, all costs incurred by AGENCIES shall be deducted from the amounts due or may become due to CONTRACTOR. If such expense exceeds the sum payable under this AGREEMENT, then CONTRACTOR and Surety shall be jointly and severally liable for the amount of the excess expense up to the amount of the Performance Bond in existence at the time this AGREEMENT is terminated.

ARTICLE 22. TERMINATION FOR CONVENIENCE

AGENCIES may terminate this AGREEMENT for their convenience at any time in whole or in part, by giving CONTRACTOR written Notice thereof. AGENCIES shall terminate by delivering to CONTRACTOR a written Notice of Termination for Convenience specifying the extent of termination and its effective date. Upon termination, CONTRACTOR shall discontinue performance of all or that portion of Work, as set forth in such Notice and AGENCIES shall pay CONTRACTOR its allowable costs incurred through the effective date of termination, and those allowable costs determined by AGENCIES to be reasonably necessary to effect such termination. Thereafter, CONTRACTOR shall have no further claims against AGENCIES under this Agreement.

ARTICLE 23. ACCEPTANCE

A. BOS Acceptance of Implementation Phase

1. The phases of the Project are set forth in Article 8, Start and Phases of Work.
2. AGENCIES, in their sole discretion, may grant BOS Acceptance of the Implementation Phase if they deem that the Work in the Implementation Phase is substantially complete, and the following conditions have been met:
 - a. CONTRACTOR has passed Commissioning and On-Site Integration Test, and Go-Live has been Approved in accordance with the Scope of Work and Requirements;
 - b. CONTRACTOR has substantially passed and has been given conditional Approval of the BOS Acceptance test; and
 - c. CONTRACTOR has committed to completing remaining punch list items and provided proof to AGENCIES' satisfaction thereof.

1 3. AGENCIES shall issue a written Notice of BOS Acceptance for the
2 Implementation Phase upon satisfaction of the conditions listed above in items 2a through 2c. The
3 occurrence of BOS Acceptance shall not relieve CONTRACTOR of any of its continuing obligations
4 hereunder.

5 B. Final Acceptance of Implementation Phase

6 Final Acceptance of an Implementation Phase shall be deemed to have occurred when all of the
7 following conditions have been met:

8 1. CONTRACTOR has provided a Final Acceptance letter certification to close out
9 the Implementation Phase. The certification shall include but not be limited to: total costs associated
10 with the Implementation Phase, date of Work completion for the phase and any additional required
11 information contained in items 2 through 8 below:

12 2. Any and all punch list items have been satisfactorily completed and Approved
13 by AGENCIES and final Approval of the Acceptance Test, has been granted by AGENCIES;

14 3. Escrowed Software has been delivered to AGENCIES in accordance with the
15 Escrow Agreement;

16 4. CONTRACTOR has delivered and AGENCIES have Approved all Deliverables,
17 including As-Built Documentation/Drawings, as defined in the Scope of Work and Requirements;

18 5. An affidavit has been delivered to AGENCIES signed by CONTRACTOR,
19 stating all debts and claims of Suppliers and Subcontractors have been paid and/or settled;

20 6. All CONTRACTOR claims for the Implementation Phase are deemed to be
21 resolved by AGENCIES, and CONTRACTOR has submitted a statement that no such requests or
22 disputes will be applied for; any and all claims under this AGREEMENT are resolved, and that no such
23 claims will be made;

24 7. All of CONTRACTOR's other obligations, including payment of liquidated
25 damages, under the Implementation Phase shall have been satisfied in full or waived in writing by
26 AGENCIES;

8. AGENCIES shall have delivered to CONTRACTOR a Notice of Final Acceptance for the phase.

C. Closeout of Operations and Maintenance Phase and Contract

Closeout of the Operations and Maintenance Phase and AGREEMENT shall be deemed to have occurred when all of the following conditions have been met:

1. The CONTRACTOR shall provide a letter certification to close out the Operations and Maintenance Phase and the AGREEMENT. The certification shall include but not be limited to total costs associated with the phase, date of phase completion and any additional required information contained in items 2 through 10 below;

2. Delivery by CONTRACTOR and Approval by AGENCIES of all Deliverables, including As-Built Documentation/Drawings, as defined in the Scope of Work and Requirements;

3. CONTRACTOR has met all transition and succession requirements pursuant to this AGREEMENT and the Scope of Work and Requirements;

4. All licenses and leases subject to transfer or assignment to AGENCIES have been transferred or assigned;

5. Any and all CONTRACTOR action items associated with the phase have been satisfactorily completed and Approved by AGENCIES;

6. An affidavit has been delivered to AGENCIES signed by CONTRACTOR, stating all debts and claims of Suppliers and Subcontractors have been paid and/or settled;

7. All CONTRACTOR claims for the phase are deemed to be resolved by AGENCIES, and CONTRACTOR has submitted a statement that no such requests or disputes will be applied for; any and all claims under this AGREEMENT are resolved, and that no such claims will be made;

8. The CONTRACTOR shall provide AGENCIES with all required materials, fixtures, furnishings, Equipment and Software; documentation and manuals, either owned by or licensed to AGENCIES, pursuant to this AGREEMENT. All such materials have been verified by

1 AGENCIES to be in good working order;

2 9. All of CONTRACTOR's other obligations under the Operations and
3 Maintenance Phase, including liquidated damages, shall have been satisfied in full or waived in writing
4 by AGENCIES; and

5 10. AGENCIES shall have delivered to CONTRACTOR a Notice of Closeout for the
6 phase and the Contract.

7 D. AGENCIES' beneficial use of the Deliverables during any phase prior to AGREEMENT
8 closeout shall not constitute Acceptance of any Deliverable, nor shall such use give rise to a claim for
9 equitable adjustment.

10 **ARTICLE 24. INSPECTION**

11 A. All Work, Sites, and Facilities shall be subject to inspection, monitoring, and testing by
12 AGENCIES at all reasonable times. Any inspection, test or Approval is for the sole benefit of AGENCIES
13 and shall not relieve CONTRACTOR of the responsibility of providing quality control measures to assure
14 that the Work strictly complies with requirements of this AGREEMENT. No inspection, test or Approval
15 by AGENCIES shall be construed as constituting or implying Acceptance unless all criteria for
16 Acceptance have been met in accordance with Article 23, Acceptance. Inspection, test or Approval shall
17 not relieve CONTRACTOR of responsibility for damage to or loss in accordance with Article 20, Risk of
18 Loss, nor in any way affect the continuing rights of AGENCIES after Acceptance of the completed Work.

19 B. CONTRACTOR shall furnish promptly, without additional charge, all facilities, labor,
20 Equipment and material reasonably needed for performing inspection and testing in a safe and
21 convenient manner as may be required by AGENCIES and as further set forth in the Scope of Work and
22 Requirements. All inspections and tests by AGENCIES shall be performed in such manner as to not
23 unnecessarily delay the Work. AGENCIES reserve the right to charge to CONTRACTOR any additional
24 cost of inspection or test when material or workmanship is not ready at the time specified by
25 CONTRACTOR for inspection or test or when re-inspection or retest is necessitated by prior rejection.
26

ARTICLE 25. INTELLECTUAL PROPERTY

A. Project Intellectual Property.

1. CONTRACTOR acknowledges and agrees that all Intellectual Property authored, created, invented under this AGREEMENT and/or for the purposes of the Project, in any medium, is either owned by AGENCIES or specially ordered or commissioned by AGENCIES, including works made for hire in accordance with Section 101 of the Copyright Act of the United States ("Project Intellectual Property"). CONTRACTOR hereby irrevocably and exclusively assigns to AGENCIES, immediately upon creation, authorship, development or invention of the Project Intellectual Property and without any restriction or condition precedent, (i) all rights, title and interest in and to such Intellectual Property and (ii) physical possession and all rights, title and interest in any executable code and all Source Code, programmer notes, and other documentation and other relevant Software (collectively, the "IP Materials") To perfect or register AGENCIES' Intellectual Property rights under this Section, CONTRACTOR agrees to execute such further documents and to do such further acts as may be necessary to perfect, register, or enforce AGENCIES's ownership of such rights, in whole or in part. If CONTRACTOR fails or refuses to execute any such documents, CONTRACTOR hereby appoints AGENCIES as CONTRACTOR's attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on CONTRACTOR's behalf and to execute such documents. AGENCIES hereby grant to CONTRACTOR a limited, non-exclusive license to use, exploit, manufacture, distribute, reproduce, adapt and display AGENCIES Intellectual Property developed and owned by AGENCIES independently of this AGREEMENT ("AGENCIES Intellectual Property") and Project Intellectual Property, solely in connection with and limited to: (a) incorporation of relevant Intellectual Property into the Project or Work; (b) performance, provision, furnishing and discharge of the Work; and (c) licensing to other entities (to the extent required for interoperability). Except as provided in this Article 25, no Intellectual Property rights of AGENCIES, including the AGENCIES' name and other trademarks, are granted to CONTRACTOR and all other rights are reserved to AGENCIES. All rights granted in this Article shall terminate at the expiration of the Term.

2. CONTRACTOR shall deliver to AGENCIES all AGENCIES Materials, documents, results and related materials created in the development of Project Intellectual Property as soon as (i) incorporated into Project, or any Deliverable, Work, service(s), and/or Software, including any Upgrades or Updates, (ii) required by the Agreement or Scope of Work and Requirements, or (iii) reasonably practicable, provided that all such IP Materials, shall be delivered to AGENCIES not later than the effective termination date of this AGREEMENT, including expiration date of the Term.

B. Contractor Intellectual Property.

1. CONTRACTOR hereby grants to AGENCIES an irrevocable, perpetual, non-exclusive, transferable (solely to an AGENCIES assignee or successor in interest), fully paid-up right and license to use, execute, perform, sublicense, distribute, reproduce, adapt, display, and prepare derivative works of the Contractor Intellectual Property in connection with the Project, or any Deliverable, Work, service(s), and/or Software, including any Upgrades or Updates. CONTRACTOR Intellectual Property shall mean Intellectual Property authored, created or invented by CONTRACTOR either (a) prior to the Effective Date or (b) independently of this AGREEMENT. The rights granted herein shall survive the termination, expiration or cancellation of this AGREEMENT or any rights related thereto.

2. CONTRACTOR shall identify and disclose all CONTRACTOR Intellectual Property required by, incorporated in or integrated into the Project, or any Deliverable, Work, service(s), and/or Software, including any Upgrades or Updates, including (when reasonably available): full and specific information detailing Intellectual Property claimed, date of authorship, creation and/or invention, date of application(s), application number(s) and registering entity(ies), date of registration(s), registration number(s) and registering entity(ies), if any, and owner including person or entity name and address. Subject to the Intellectual Property deposit requirements of Article 27, Contractor shall not be required to identify or disclose Contractor Intellectual Property only to the extent that doing so would eliminate or substantially limit the legal protections for such Intellectual Property.

C. Third Party Intellectual Property.

1. CONTRACTOR shall secure license(s) in the name of AGENCIES to use, execute,

1 perform, sublicense, distribute, reproduce, adapt, display, and prepare derivative works of the Third-
2 Party Intellectual Property in connection with the Project, or any Deliverable, Work, Service(s), and/or
3 Software, including any Upgrades or Updates, including a representation and warranty that the Third
4 Party Intellectual Property does not infringe the rights, including Intellectual Property rights, of any other
5 person or entity. Third Party Intellectual Property shall mean Intellectual Property owned by any person
6 or entity unrelated to CONTRACTOR which is incorporated into the Project, Work or service(s).
7 AGENCIES shall review and Approve, in their sole discretion, any license(s) pursuant to this Article and
8 in no event shall CONTRACTOR incorporate Third-Party Intellectual Property into the Project, or any
9 Deliverable, Work, service(s), and/or Software, including any Upgrades or Updates without first securing
10 such licenses and subject to AGENCIES' prior review and Approval.

11 2. CONTRACTOR shall identify and disclose to AGENCIES all Third-Party Intellectual
12 Property contained, or included, (i) in the Project Intellectual Property or (ii) in the Project, or any
13 Deliverable, Work, service(s), and/or Software, including any Upgrades or Updates, including (when
14 reasonably available): full and specific information detailing Intellectual Property claimed; date of
15 authorship, creation and/or invention; date of application(s); application number(s) and registering
16 entity(ies); date of registration(s), registration number(s) and registering entity(ies), if any, and owner,
17 including person or entity name and address.

18 3. Contractor shall obtain from each owner of the Third-Party Intellectual Property
19 prior consent to have the relevant Third-Party Intellectual Property deposited into an Escrow in
20 accordance with Article 26, Intellectual Property Escrows, or, to the extent the owner of the relevant
21 Third-Party Intellectual Property has not provided such consent, obtain AGENCIES' prior written
22 Approval for a waiver of this requirement.

23 4. CONTRACTOR shall not incorporate Third-Party Intellectual Property into the Project
24 without first obtaining (a) the licenses described in Article 25.C.1 and (b) consent for the delivery or deposit
25 of IP Materials from each owner of the Third-Party Intellectual Property or such requirement is waived by
26 AGENCIES in accordance with Article 25.C.3. The rights granted in this Article 25.C.1 shall survive the

1 termination, expiration or cancellation of this AGREEMENT or any rights related thereto.

2 D. Delivery of IP Materials. Contractor shall deliver Contractor and Third-Party IP Materials into
3 Escrow in accordance with Article 26, Intellectual Property Escrow and Article 27, Escrow Agreement
4 Dates.

5 E. Payments Inclusive. CONTRACTOR acknowledges and agrees that the payments provided
6 for in Article 10 include all royalties, fees, costs and expenses arising from or related to the Project
7 Intellectual Property, including without limitation any fees pursuant to Articles 25, 26, and 27.

8 **ARTICLE 26. INTELLECTUAL PROPERTY ESCROW**

9 A. CONTRACTOR acknowledges that AGENCIES must be ensured access to Contractor and
10 Third- Party IP Materials at any time, and must be assured that such IP Materials are delivered to Escrow
11 pursuant to this Article 26 and Article 27.

12 B. CONTRACTOR or an owner of Third-Party Intellectual Property shall deposit the IP Materials
13 with an Escrow Agent. AGENCIES and CONTRACTOR shall: (a) mutually select an escrow company
14 (Escrow Agent") engaged in the business of receiving and maintaining escrows of software source code
15 and/or other intellectual property; (b) establish an Escrow (with the Escrow Agent on terms and conditions
16 substantially similar terms and conditions to the Form of Intellectual Property Escrow AGREEMENT,
17 Form F, for the deposit, retention, upkeep, authentication, confirmation and release of IP Materials to
18 AGENCIES pursuant to this AGREEMENT; (c) adhere to the deposit dates set forth in Article 27 and (c)
19 determine a process for releasing from Escrow the IP Materials to be delivered to AGENCIES pursuant
20 to this AGREEMENT. Intellectual Property Escrows also may include Affiliates as parties and may
21 include deposit of their Intellectual Property.

22 C. CONTRACTOR shall be responsible for the fees and costs of establishing and maintaining
23 the Escrow Agent for the Term. AGENCIES shall be responsible for all costs arising in connection with
24 the maintenance of the Escrow referred to in this Article beyond the Term.

25 D. The Escrow shall survive expiration or earlier termination of this AGREEMENT regardless of
26 the reason.

1 E. The IP Materials shall be released and delivered to AGENCIES in any of the following
2 circumstances:

- 3 1. This AGREEMENT is terminated for any reason including expiration of the Term;
- 4 2. A voluntary or involuntary bankruptcy or insolvency of CONTRACTOR occurs;
- 5 3. CONTRACTOR is dissolved or liquidated;
- 6 4. CONTRACTOR or any third party, (a) fails or ceases to provide services as necessary
7 to permit continued use of any such Intellectual Property or (b) otherwise ceases to engage in the ordinary
8 course of the business of manufacturing, supplying, maintaining and servicing the IP Materials pursuant
9 to a license or any sublicense thereof.

10 F. Any Contractor Intellectual Property released and delivered to AGENCIES under the terms of
11 this AGREEMENT shall be deemed confidential and not disclosed or distributed to any third party without
12 a non-disclosure agreement to ensure such confidentiality. Without limiting the license grants provided
13 in this Article and subject to the confidentiality obligations of this Agreement, any and all rights to
14 Contractor Intellectual Property granted to AGENCIES shall include a right to sublicense and disclose
15 such Contractor Intellectual Property to any AGENCIES employee, agent, representative, vendor,
16 assignee or affiliate in its sole discretion.

17 **ARTICLE 27. ESCROW AGREEMENT**

18 A. Within forty-five (45) Calendar Days from the AGREEMENT Effective Date, AGENCIES, an
19 Escrow Agent, and CONTRACTOR shall enter into an Escrow AGREEMENT as set forth in Article 26.

20 B. AGENCIES may at their sole discretion require an initial deposit of the complete Contractor
21 IP Materials within sixty (60) Calendar Days of AGREEMENT Effective Date.

22 C. Additional deposits shall be made to the Escrow within ten (10) Calendar Days of Go-Live
23 and within ten (10) Calendar Days of BOS Acceptance.

24 D. In the event CONTRACTOR updates, revises or supplements any of the IP Materials
25 deposited or revises, supplements or creates additional information, CONTRACTOR shall deposit a
26 complete set of such revised, supplemented, or additional information with the above-named Escrow

1 Agent as soon as reasonably practicable, but in no event more than thirty (30) Calendar Days of such
2 revision, supplement or addition and shall indicate with each deposit what information and which
3 documents and pages have been revised, supplemented or added since the last deposit.

4 E. CONTRACTOR shall make deposits of the complete set of IP Materials current at the time of
5 deposit, at a minimum of semi-annually if no deposits provided for in paragraph D have occurred within
6 the relevant preceding six-month period.

7 **ARTICLE 28. WARRANTIES**

8 A. CONTRACTOR warrants the following:

9 1. All guarantees and warranties made herein are fully enforceable by AGENCIES
10 acting in their own names.

11 2. The Equipment and Software CONTRACTOR installs and places into operation
12 will not result in any damage to existing facilities, walls or other parts of adjacent, abutting or overhead
13 buildings, railroads, bridges, roadway, structures, surfaces, or cause any physical or mental injury to any
14 person.

15 3. All provided Equipment is new unless otherwise specifically Approved by
16 AGENCIES.

17 B. BOS Warranty

18 CONTRACTOR shall provide a full BOS warranty on all System Equipment, Hardware and
19 Software beginning from the date of Go-Live through the end of the Operations and Maintenance Phase
20 hereinafter referred to as "BOS Warranty Period", warranting that the full BOS shall be and perform as
21 set forth in the Scope of Work and Requirements. During the BOS Warranty Period, AGENCIES shall not
22 be charged for any Maintenance or Software Support Services Work performed on the BOS, other than
23 Maintenance payments identified in the Price Proposal, or Work identified as excluded in the Scope of
24 Work and Requirements. Such excluded Work shall include Work related to Force Majeure events or
25 Changes requested by AGENCIES, pursuant to Article 16, Changes. Notwithstanding the foregoing, in
26 the period after installation and prior to the commencement of the Operations and Maintenance Phase,

all Maintenance and Software Support Services Work shall also be at CONTRACTOR's sole expense. Further, at all times during the Term, CONTRACTOR shall promptly repair or replace, at its own cost or expense, including, the cost of removal, installation and transportation, any unit of Equipment, Hardware, or Software, or part or component thereof, which proves defective or otherwise fails to comply with the Scope of Work and Requirements. All fees associated with restocking cancelled or returned orders shall be the responsibility of CONTRACTOR.

C. Software Warranties

CONTRACTOR warrants that the Software needed to operate the BOS shall be as set forth in the Scope of Work and Requirements, and that commencing upon Go-Live, and for the Term, the Software and each module or component and function thereof shall:

1. Be free from defects in materials and workmanship under normal use;
2. Remain in good working order, be free from viruses; trap doors; disabling devices; Trojan horses; disabling codes; back doors; time bombs; drop-dead devices; worms, and any other type of malicious or damaging code or other technology or means which has the ability to interfere with the use of the BOS by AGENCIES or its designees, or permit access to AGENCIES' computing systems without its knowledge or contrary to its system connectivity policies or procedures;
3. Not interfere with toll collection;
4. Operate and function fully, properly and in conformity with the warranties in this AGREEMENT, and
5. Operate fully and correctly in the operating environment identified in the Scope of Work and Requirements, including by means of the full and correct performance of the Software, and all Updates, Enhancements, or new releases of the Software, on or in connection with the Equipment, any Updates, Enhancements, or new releases to such Equipment, and any other Software used by or in connection with any such Equipment;
6. Be fully compatible and interface completely and effectively with the Equipment, including other Software programs provided to AGENCIES hereunder, such that the Software and other

Equipment combined will perform and continuously attain the standards identified in the Scope of Work and Requirements, and

7. Accurately direct the Operation of the BOS, as required by the Scope of Work and Requirements, and the descriptions, specifications and documentation set forth therein and herein.

D. Software Maintenance Work

During the Term, CONTRACTOR shall, at its own cost and expense, provide Maintenance and Software Support Services Work to keep the Software in good working order and free from defects such that the BOS shall perform in accordance with this AGREEMENT, including Scope of Work and Requirements.

1. CONTRACTOR shall provide technical support and shall, at its own cost and expense, timely remedy any failure, malfunction, defect or non-conformity in Software, in accordance with the Scope of Work and Requirements.

2. CONTRACTOR shall provide AGENCIES the most current release of all Software available on the date of delivery of the BOS Software to maintain optimum performance pursuant to this AGREEMENT.

3. CONTRACTOR shall promptly provide Notice to AGENCIES in writing of any defects or malfunctions in the Software, regardless of the source of information. CONTRACTOR shall promptly correct all defects or malfunctions in the Software or documentation discovered and shall promptly provide AGENCIES with corrected copies of same, without additional charge. If Software can only be corrected in conjunction with additional or revised Hardware, CONTRACTOR shall provide such Hardware to AGENCIES, and the cost of such Hardware shall be borne by CONTRACTOR, and not be reimbursable by AGENCIES.

a. No Updates, Upgrades, or Enhancements shall adversely affect the performance of the BOS, in whole or in part, or result in any failure to meet any Requirements of the Scope of Work and Requirements.

b. CONTRACTOR shall ensure continued satisfactory performance by the

1 current operating system of the Software in accordance with all provisions of this Article.

2 c. In the event that the Software does not satisfy the conditions of
3 performance set forth in the Scope of Work and Requirements, CONTRACTOR is obligated to
4 promptly repair or replace such Software at CONTRACTOR's sole cost and expense or, if expressly
5 agreed to in writing by AGENCIES, provide different Equipment or Software, and perform Work
6 required to attain the Performance Measures and requirements set forth in the Scope of Work and
7 Requirements.

8 d. In the event of any defect in the media upon which any tangible portions of
9 the Software are provided, CONTRACTOR shall provide AGENCIES with a new copy of the
10 Software.

11 e. Without releasing CONTRACTOR from its obligations for warranty (during
12 an applicable warranty period), support or Maintenance of the Software, AGENCIES shall have the
13 right to use and maintain versions of the Software provided by CONTRACTOR which are one or
14 more levels behind the most current version of such Software and to refuse to install any Updates,
15 Upgrades, or Enhancements if, in AGENCIES' discretion, installation of such Updates, Upgrades, or
16 Enhancements would interfere with its Operations. CONTRACTOR shall not, however, be
17 responsible or liable for the effect of any error or defect in the version of the Software then in use by
18 AGENCIES that occurs after CONTRACTOR has both (i) offered, by written Notice to AGENCIES, a
19 suitable correction (by way of Update, Upgrade, Enhancement or otherwise) of such error or defect
20 and (ii) provided AGENCIES a reasonable opportunity to implement such existing correction,
21 provided that CONTRACTOR establishes that neither the implementation nor the use of such
22 correction would limit, interfere with, adversely affect, or materially alter the interoperability,
23 functionality or quality of the BOS.

24 E. Third-Party Warranties

25 CONTRACTOR shall assign to AGENCIES, and AGENCIES shall have the benefit of, any and
26 all Subcontractors' and Suppliers' warranties and representations with respect to the BOS and Work

1 provided hereunder. The CONTRACTOR's agreements with Subcontractors, Suppliers and any other
2 third parties shall require that such parties (a) consent to the assignment of such warranties and
3 representations to AGENCIES, (b) agree to the enforcement of such warranties and representations by
4 AGENCIES in their own names, and (c) furnish to AGENCIES, the warranties set forth herein. The
5 CONTRACTOR shall obtain maintenance agreements for third-party Software. CONTRACTOR shall
6 secure such maintenance agreements for the same duration and upon the same terms and conditions
7 as the Maintenance provisions between CONTRACTOR and AGENCIES. At AGENCIES' request,
8 CONTRACTOR shall provide supporting documentation which confirms that these warranties are
9 enforceable in AGENCIES' names.

10 F. Data Accuracy

11 CONTRACTOR acknowledges and understands that the data and/or information it collects,
12 processes and/or provides to AGENCIES will be relied upon by AGENCIES and other persons or entities
13 that are now or will in the future be under agreement with AGENCIES in accordance with the Scope of
14 Work and Requirements. Should information derived and provided by CONTRACTOR be inaccurate and
15 cause AGENCIES to incur damages or additional expenses, AGENCIES shall notify CONTRACTOR and
16 CONTRACTOR shall immediately place any applicable insurance carrier on notice of a potential claim.
17 This provision shall survive termination of this AGREEMENT, and CONTRACTOR agrees to waive any
18 applicable limitation periods consistent with enforcement of this provision.

19 G. Neither Acceptance of the Implementation Phase of the BOS and Work or payment therefor,
20 nor any provision in this AGREEMENT, nor partial or entire use of the BOS and Work by AGENCIES
21 shall constitute Final Acceptance of Work not performed in accordance with this AGREEMENT or relieve
22 CONTRACTOR of liability for any express or implied warranties or responsibility for faulty materials or
23 workmanship.

24 H. The obligations set forth in this Article shall be in addition to any other warranty obligations
25 set forth in this AGREEMENT. All provisions of this Article, referring or relating to obligations to be
26 performed pursuant to an applicable warranty period that extends beyond the Term, shall survive the

1 expiration, cancellation or earlier termination of this AGREEMENT.

2 **ARTICLE 29. ADDITIONAL CONTRACTOR WARRANTIES**

3 A. CONTRACTOR warrants that it is fully experienced and properly qualified, licensed,
4 equipped, organized and financed to perform all the Work.

5 B. CONTRACTOR warrants that all Work will be provided in accordance with this AGREEMENT.

6 C. CONTRACTOR warrants that (1) all Work performed and all Equipment, Software, Hardware
7 and other material provided under this AGREEMENT by CONTRACTOR or any of its Subcontractors or
8 Suppliers conforms to the requirements herein and is free of any defects; and (2) Equipment and
9 Hardware furnished by CONTRACTOR or any of its Subcontractors or Suppliers at any tier, shall be of
10 modern design, in good working condition and fit for use of its intended purpose. For any Equipment or
11 Hardware purchased within twelve (12) months of the end of the Term, such warranty shall continue for
12 a minimum period of one (1) year from the end of the Term, or the manufacturer's standard warranty,
13 whichever is longer.

14 **ARTICLE 30. DEFECTS/FAILURE**

15 A. Upon discovery of any defect or failure in the Software, Equipment or Hardware,
16 CONTRACTOR shall promptly provide AGENCIES Notice thereof and repair or replace same at its sole
17 cost and expense. If expressly agreed to in writing by AGENCIES, CONTRACTOR may provide different
18 Software, Equipment or Hardware. In the event of any defect in the media upon which any tangible
19 portions of the Software are provided, CONTRACTOR shall provide AGENCIES with a new copy of the
20 Software. In addition, CONTRACTOR shall remedy at its own expense any damage to AGENCIES
21 owned or controlled real or personal property, when that damage arises out of such defects.

22 B. In the event AGENCIES determine there is a defect or failure in the Software, Equipment or
23 Hardware or damage to AGENCIES' property, AGENCIES shall notify CONTRACTOR in writing within a
24 reasonable time after the discovery of same. CONTRACTOR has seven (7) Calendar Days from receipt
25 of Notice from AGENCIES to respond and specify how CONTRACTOR will remedy the failure, defect, or
26 damage. If AGENCIES are not satisfied with CONTRACTOR'S proposed remedy, CONTRACTOR and

1 AGENCIES shall, within three (3) Business Days, meet and mutually agree when and how
2 CONTRACTOR shall remedy such violation. In the case of an emergency requiring immediate corrective
3 action, CONTRACTOR shall implement such action necessary to remedy the defect, failure or damage
4 as required by AGENCIES.

5 C. Should CONTRACTOR fail to remedy any failure, defect or damage within a reasonable time
6 to the reasonable satisfaction of AGENCIES, AGENCIES shall have the right with their own forces or
7 other contractors, to replace, repair or otherwise remedy such failure, defect or damage at
8 CONTRACTOR's expense. In addition, CONTRACTOR shall be liable for all damages arising out its
9 failure to promptly remedy the defect, failure or damage.

10 D. CONTRACTOR agrees to promptly remedy, at no cost to AGENCIES, any defects
11 determined by AGENCIES to be Pervasive, such that if AGENCIES determine that any Equipment,
12 component, sub-component or Software is experiencing continued or repetitive failure that requires
13 constant replacement or repair, CONTRACTOR agrees that a "Pervasive Defect" shall be deemed to be
14 present in such affected types of Equipment or Software. CONTRACTOR shall perform an investigation
15 of the issues and prepare a report that includes a reason for the failure and its plan for resolution. This
16 report and a resolution plan shall be produced by CONTRACTOR and submitted to AGENCIES within
17 seven (7) Calendar Days of notification by AGENCIES of the Pervasive Defect. The report and plan shall
18 include the investigation results, remediation steps performed to-date, and a plan and schedule to
19 complete the Pervasive Defect resolution. Such resolution shall be in a manner satisfactory to AGENCIES
20 and that permanently addresses the problem and corrects the defect so that such defect does not
21 continue to occur. The status shall be updated and briefed in weekly meetings until resolution is complete.
22 Notwithstanding the foregoing, AGENCIES do not waive any of their other rights enumerated in
23 paragraphs A through C of this article.

24 E. The obligations set forth in this Article shall be in addition to any warranty obligations set forth
25 in this Agreement. The provisions of this Article shall survive the expiration or earlier termination of this
26 Agreement.

1 F. All Subcontractors, manufacturers, and Suppliers' warranties, expressed or implied,
2 respecting any Work, Equipment, Software or Hardware furnished hereunder, shall, at the direction of
3 AGENCIES, be enforced by CONTRACTOR for the benefit of AGENCIES.

4 G. If directed by AGENCIES, CONTRACTOR shall require any such warranties to be executed
5 in writing to AGENCIES.

6 H. Any equipment, hardware or software furnished by AGENCIES and accepted by
7 CONTRACTOR, shall be considered Equipment, Hardware or Software, as defined in Exhibit A,
8 Definitions and Acronyms, and subject to all of CONTRACTOR's obligations as set forth in this
9 AGREEMENT.

10 I. The obligations and remedies specified in this Article shall not limit AGENCIES' rights and
11 remedies provided elsewhere in this AGREEMENT.

12 **ARTICLE 31. COORDINATION WITH OTHER CONTRACTORS**

13 A. During the course of this AGREEMENT, AGENCIES, or either of them, may undertake or
14 award other agreements for additional work, including but not limited to separate agreements with
15 different contractors. It is critical that close coordination with interfacing contractors occurs throughout the
16 Term. CONTRACTOR shall fully cooperate with AGENCIES and their contractors and carefully integrate
17 and schedule its own Work with said contractors.

18 B. CONTRACTOR shall be required to perform Work in the AUTHORITY's Anaheim CSC
19 Facility, which is leased by the AUTHORITY. CONTRACTOR shall be subject to and shall comply with
20 the terms of such lease and shall coordinate with the landlord in all aspects of its occupancy and
21 operations at the Facility. The terms of the lease for the Anaheim CSC Facility are incorporated by
22 reference to this Agreement.

23 C. CONTRACTOR shall also be required to perform Work at the COMMISSION's Corona CSC
24 Facility and shall execute a license agreement with the COMMISSION for its use of the Facility and shall
25 be subject to and comply with the terms of the license agreement. CONTRACTOR shall be expected to
26 cooperate with the I-15 Express Lanes operator who also occupies this Facility. The terms of the license

1 for the Corona CSC Facility are incorporated by reference to this Agreement.

2 D. Should problems in coordination with other contractor(s) occur CONTRACTOR shall make
3 AGENCIES aware of these problems immediately and shall take steps to address the problems and
4 mitigate any delays or additional costs.

5 E. CONTRACTOR shall cooperate with other contractors or forces performing construction or
6 work of any other nature within or adjacent to Sites specified in order to avoid any delay or hindrance to
7 such other contractors or forces. AGENCIES reserve the right to perform other or additional work at or
8 near the Site (including material sources) at any time, by the use of other forces.

9 F. CONTRACTOR shall be responsible to other contractor(s) for all damage to work, to persons
10 or property caused by CONTRACTOR, its Subcontractor(s), or its Suppliers, and losses caused by
11 unnecessary delays or failure to finish the Work within the time specified for completion. Any damage to
12 Work, persons or property of CONTRACTOR by other contractors shall be the responsibility of other
13 contractor(s) and CONTRACTOR shall have no claim against AGENCIES or Caltrans.

14 G. CONTRACTOR's Responsibility for design. Upon Approval of the design, including any
15 related infrastructure, construction or installation design, CONTRACTOR shall assume responsibility for
16 the design to the extent that if the Work is installed as designed and the BOS or CSC does not meet the
17 Performance Measures of this AGREEMENT, CONTRACTOR shall be responsible for the costs of
18 redesign, rework and additional Equipment costs and any other costs associated with the sub-standard
19 performance.

20 **ARTICLE 32. CONTRACTOR INSPECTION OF FACILITIES**

21 CONTRACTOR acknowledges that it has investigated and satisfied itself as to the conditions of
22 the Sites including, but not restricted to, building locations, Facilities, conditions, size, layout, parking,
23 transportation, disposal, availability of labor, roads, and other similar physical conditions at the Sites, and
24 the character of Equipment and Facilities needed preliminary to and during prosecution of the Work. Any
25 failure by CONTRACTOR to acquaint itself with the available information will not relieve it from
26 responsibility for the difficulty or cost of successfully performing the Work. AGENCIES assume no

responsibility for any conclusions or interpretations made by CONTRACTOR on the basis of the information made available by AGENCIES.

ARTICLE 33. REQUIREMENTS FOR REGISTRATION OF DESIGNERS

All design and engineering work furnished by CONTRACTOR shall be performed by or under the supervision of persons licensed to practice architecture, engineering or surveying (as applicable) in the State of California, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the AGREEMENT and who shall assume professional responsibility for the accuracy and completeness of the design documents and construction documents prepared or checked by them.

ARTICLE 34. SEISMIC SAFETY REQUIREMENTS

CONTRACTOR agrees to ensure that all Work performed under this AGREEMENT including work performed by a Subcontractor is in compliance with the standards required by applicable seismic safety regulations.

ARTICLE 35. ASSIGNMENTS AND SUBCONTRACTS

A. Neither this AGREEMENT nor any interest herein nor claim hereunder may be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this AGREEMENT be subcontracted by CONTRACTOR, without the prior written consent of AGENCIES. Consent by AGENCIES shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this AGREEMENT.

B. AGENCIES hereby consent to CONTRACTOR's subcontracting portions of the Scope of Work and Requirements to the parties identified below with their subcontract amounts described below. CONTRACTOR shall include in the subcontract agreement the stipulation that CONTRACTOR, not AGENCIES, is solely responsible for payment to the Subcontractor for the amounts owing, and that the Subcontractor shall have no claim, and shall take no action, against AGENCIES, its officers, directors, employees or sureties for nonpayment by CONTRACTOR.

Subcontractor Name/Addresses	Subcontractor Function	Subcontractor Amount
		\$.00
		\$.00
		\$.00

C. CONTRACTOR shall engage the Collection Agency(ies) and Merchant Services Provider identified in paragraph B as Subcontractors. The subcontracts between CONTRACTOR and such Collection Agency(ies) and Merchant Service Provider shall name the AGENCIES as intended third-party beneficiaries or alternatively as parties to the subcontract, as determined by AGENCIES, and shall incorporate requirements for Collection Agency and Merchant Services Provider set forth in the Scope of Work and Requirements. Notwithstanding paragraph B of this Article, payment to the Collections Agency and Merchant Services Provider shall be as set forth in the subcontracts for this Work..

D. AGENCIES shall have the right to Approve all of the terms and conditions of the Collection Agency and the Merchant Service Provider agreements prior to execution.

ARTICLE 36. TRANSITION AND SUCCESSION

A. CONTRACTOR acknowledges that the Work and Scope of Work and Requirements are vital to AGENCIES and must be continued without interruption. Upon termination of the AGREEMENT, a successor(s) (AGENCIES or a new contractor(s)) may be responsible for providing this Work. The CONTRACTOR agrees to exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor(s).

B. Upon expiration the Term or termination of the AGREEMENT, whether for cause or convenience, CONTRACTOR shall accomplish a complete transition of the Work being terminated from CONTRACTOR and any Subcontractors to the successor(s) without any interruption of or adverse impact on the Work or any other services provided by third parties (the "Disentanglement"). CONTRACTOR shall cooperate with AGENCIES and any successor(s) and otherwise promptly take all steps required to assist AGENCIES in effecting a complete Disentanglement. CONTRACTOR shall provide all information

1 regarding the Work or as otherwise needed for Disentanglement, including data conversion, files,
2 interface specifications, training staff assuming responsibility, and related professional services, to the
3 successor(s), all included as a part of its Price Proposal. CONTRACTOR shall provide for the prompt
4 and orderly conclusion of all Work, as AGENCIES may direct, including completion or partial completion
5 of projects, documentation of Work in process, and other measures to assure an orderly transition to the
6 successor(s). All Work related to Disentanglement as may reasonably be requested by AGENCIES shall
7 be deemed a part of the base Work and shall be performed by CONTRACTOR at no additional cost to
8 AGENCIES. CONTRACTOR's obligation to provide the Work shall not cease until Disentanglement is
9 satisfactory to AGENCIES, including the performance by CONTRACTOR of all asset-transfers and other
10 obligations of CONTRACTOR provided in this section, has been completed.

11 C. The Disentanglement process shall begin on any of the following dates: (i) the date prior to
12 end of Agreement, which AGENCIES have provided in their Notice that CONTRACTOR should
13 commence Disentanglement (ii) the date, prior to the end of any initial or extended term when AGENCIES
14 provide Notice to CONTRACTOR that AGENCIES elected not to extend pursuant to the AGREEMENT,
15 or (ii) the date at which any Termination Notice is delivered, if AGENCIES elect to terminate any or all of
16 the Work pursuant to this AGREEMENT.

17 D. CONTRACTOR and AGENCIES shall discuss in good faith a plan for executing
18 CONTRACTOR's Disentanglement obligations and for the transfer of Work in accordance with the Scope
19 of Work and Requirements, however, CONTRACTOR's obligation under this AGREEMENT to provide
20 all Work necessary for Disentanglement shall not be lessened in any respect. CONTRACTOR shall
21 develop with the new provider or AGENCIES' staff, a Contract Transition Plan as set forth in the Scope
22 of Work and Requirements describing the nature and extent of transition Work required. This Contract
23 Transition Plan and dates for transferring responsibilities for each division of Work shall be submitted
24 within thirty (30) Calendar Days of Notice provided under Paragraph B of this Article. Upon completion of
25 AGENCIES review, all parties will meet and resolve any additional requirements/differences.
26 CONTRACTOR shall be required to perform its Disentanglement obligations on an expedited basis, as

1 determined by AGENCIES, if AGENCIES terminate the AGREEMENT for cause.

2 E. Specific Obligations

3 The Disentanglement shall include the performance of the following specific obligations:

4 1. Third-Party Authorizations:

5 Without limiting the obligations of CONTRACTOR pursuant to any other clause
6 herein, CONTRACTOR shall, subject to the terms of any third-party contracts and
7 licenses provided by CONTRACTOR, procure at no charge to AGENCIES any third-
8 party authorizations necessary to grant AGENCIES the use and benefit of any third-
9 party contracts and licenses between CONTRACTOR and third-party contractors
10 used to provide the Work, pending their assignment to AGENCIES.

11 2. Transfer of Assets

12 CONTRACTOR shall convey to AGENCIES all AGENCIES' assets in CONTRACTOR's
13 possession and other CONTRACTOR Project assets as AGENCIES may select, or
14 dispose of such assets in accordance with the Article 42, Disposition of Equipment.

15 3. Transfer of Leases, Licenses, and Contracts

16 CONTRACTOR, at its expense, shall convey or assign to AGENCIES such leases,
17 licenses, and other contracts used by CONTRACTOR, AGENCIES, or any other person
18 in connection with the Work, as AGENCIES may select. CONTRACTOR's obligation
19 described herein, shall include CONTRACTOR's performance of all obligations under
20 such leases, licenses, and other contracts to be performed by it with respect to periods
21 prior to the date of conveyance or assignment and CONTRACTOR shall reimburse
22 AGENCIES for any losses resulting from any claim that CONTRACTOR did not perform
23 any such obligations. CONTRACTOR shall also obtain for AGENCIES the right, upon
24 Disentanglement, to obtain maintenance (including all Enhancements and Upgrades) and
25 support with respect to the assets that are the subject of such leases and licenses at the
26 price at which, and for so long as, such maintenance and support is made commercially

1 available to other customers of such third parties whose consent is being procured
2 hereunder. CONTRACTOR shall transfer intellectual property in accordance with
3 Articles 25, 26, and 27.

4 4. Delivery of Documentation

5 CONTRACTOR shall deliver to AGENCIES all documentation and data related to
6 AGENCIES, including AGENCIES' data held by CONTRACTOR. CONTRACTOR shall
7 retain all data necessary to comply with the requirements for record retention and audit
8 established in this AGREEMENT.

9 5. Hiring of CONTRACTOR Employees

10 CONTRACTOR shall cooperate with and assist (and shall cause its Subcontractors to
11 cooperate with and assist) AGENCIES in offering employment, at the sole discretion of
12 AGENCIES, to any or all skilled or specially trained CONTRACTOR employees (and to
13 any or all employees of CONTRACTOR's Subcontractors) that are substantially involved
14 in the provision of Work whether such offers are made at the time of, after, or in
15 anticipation of expiration or termination of the AGREEMENT term.

16 6. Maintenance of Assets

17 CONTRACTOR shall maintain all Hardware, Software, Systems, networks, technologies,
18 and other assets utilized in providing Work to AGENCIES (including leased and licensed
19 assets) in good condition and in such locations and configurations as to be readily
20 identifiable and transferable to AGENCIES or its designees in accordance with the
21 provisions of this AGREEMENT; additionally, CONTRACTOR shall insure such assets in
22 accordance with this AGREEMENT.

23 7. Continued Provision of Staffing

24 CONTRACTOR shall provide sufficient experienced personnel in each division of Work
25 during the entire transition period to ensure that the Work is maintained at the level of
26 proficiency required by the AGREEMENT.

1 F. CONTRACTOR shall remain obligated to provide Work at AGENCIES' request for up to
2 twelve (12) months after completion and Approval of the Disentanglement Work enumerated above, and
3 AGENCIES shall pay for this Work at the rates set forth in the AGREEMENT for additional services. This
4 paragraph G expressly survives the Term.

5 **ARTICLE 37. CONFLICT OF INTEREST**

6 A. CONTRACTOR agrees to avoid organizational conflicts of interest. An organizational conflict
7 of interest means that due to other activities, relationships or contracts, CONTRACTOR is unable, or
8 potentially unable to render impartial assistance or advice to AGENCIES; CONTRACTOR's objectivity in
9 performing the Work identified in the Scope of Work and Requirements is or might be otherwise impaired;
10 CONTRACTOR has an unfair competitive advantage, or is engaging in activities that AGENCIES
11 consider adverse to the 91 Express Lanes. CONTRACTOR is obligated to fully disclose to AGENCIES
12 in writing Conflict of Interest issues with AUTHORITY and/or COMMISSION as soon as they are known
13 to CONTRACTOR. All disclosures must be submitted in writing to AGENCIES pursuant to the Notice
14 provision herein. This disclosure requirement is for the entire Term.

15 B. CONTRACTOR shall disclose any financial interests it may have in the 91 Express Lanes,
16 and any other financial, business, or other relationship with AUTHORITY or COMMISSION that may have
17 an impact upon this AGREEMENT, or any ensuing AUTHORITY or COMMISSION planned or current
18 project. CONTRACTOR shall also list current clients who may have a financial interest in the outcome of
19 this AGREEMENT, or any ensuing AUTHORITY or COMMISSION project, which will follow.

20 C. CONTRACTOR hereby certifies that it and its Subcontractors do not now have, nor shall
21 acquire any financial or business interest that would conflict with the performance of Work under this
22 AGREEMENT.

23 **ARTICLE 38. PROHIBITION**

24 A. The following prohibitions apply to this AGREEMENT:

- 25 • The firm, including all subcontractors (at any tier), regardless of the level of service
26 provided by said subcontractor(s), awarded the program management services

contract for the Authority's Highway Delivery Department, may not participate in this Agreement as CONTRACTOR or a Subcontractor.

- The firm, including all Subcontractors (at any tier), regardless of the level of service provided by said subcontractor(s), awarded the program management consultant contract for the Authority's I-405 Improvement Project, may not participate in this AGREEMENT as CONTRACTOR or a Subcontractor.

B. The evaluation of team composition with regards to conflicts of interest will be done on a case-by-case basis.

ARTICLE 39. CODE OF CONDUCT

CONTRACTOR agrees to comply with AUTHORITY Code of Conduct as it relates to third-party contracts, which is hereby referenced and by this reference is incorporated herein. CONTRACTOR agrees to include these requirements in all of its subcontracts.

ARTICLE 40. HEALTH AND SAFETY REQUIREMENTS

CONTRACTOR shall comply with all the requirements set forth in Exhibit I, titled "Level 1 HEALTH, SAFETY and ENVIRONMENTAL SPECIFICATIONS." As used therein, "Contractor" shall mean "CONTRACTOR," and "Subcontractor" shall mean "Subcontractor."

ARTICLE 41. CONTRACTOR PURCHASED EQUIPMENT

A. Prior authorization, in writing, by AGENCIES' Project Managers shall be required before CONTRACTOR enters into any unbudgeted purchase order, or subcontract exceeding \$5,000.00 for supplies and/or Equipment. CONTRACTOR shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service or consulting work not covered in CONTRACTOR's Price Proposal and exceeding \$5,000.00, three (3) competitive quotations must be submitted with the request, or the absence of bidding (sole source) must be adequately justified.

C. Any Equipment purchased as a result of this AGREEMENT is subject to the following: CONTRACTOR shall maintain an inventory of all nonexpendable property. Nonexpendable property is

1 defined as having useful life of at least two years and an acquisition cost of \$5,000.00 or more. Upon the
2 expiration or termination of this AGREEMENT, AGENCIES may elect to retain the Equipment, require
3 CONTRACTOR to decommission and dispose of the Equipment at no cost to AGENCIES, or require
4 CONTRACTOR to sell such Equipment at the best price obtainable at a public or private sale, and credit
5 AGENCIES in an amount equal to the sale price. AGENCIES may also elect to allow CONTRACTOR to
6 keep the Equipment, in which case AGENCIES and CONTRACTOR shall come to agreement on a
7 mutually acceptable fair market value price. AGENCIES may elect to require CONTRACTOR to hire an
8 appraiser at CONTRACTOR's cost, in order to determine a basis for a fair market value price. If
9 CONTRACTOR sells the Equipment, the terms and conditions of such sale must be Approved in advance
10 by AGENCY.

11 D. All Subcontracts entered into as a result of this AGREEMENT shall contain all of the
12 provisions of this Article.

13 **ARTICLE 42. DISPOSITION OF EQUIPMENT-BOS AS A SERVICE**

14 A. AGENCIES shall have the right to assume all required licenses, leases and service
15 agreements to allow uninterrupted use, operation and maintenance of the Equipment and services the
16 same terms as those provided to CONTRACTOR for such services.

17 B. CONTRACTOR will effect the transfer of title, or assignment of leases, service agreements
18 and licenses, as applicable, as a part of the Disentanglement Work and AGREEMENT closeout.

19 **ARTICLE 43. OWNERSHIP AND HANDLING OF REPORTS, DOCUMENTS, AND DATA**

20 A. The originals of all letters, documents, reports and other products and data produced under
21 this AGREEMENT shall upon request be delivered to, and shall be the sole property of AGENCIES.
22 Deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by
23 AGENCIES.

24 B. CONTRACTOR acknowledges and agrees that privacy of 91 Express Lanes customers is of
25 paramount importance to AGENCIES and the customers; and subject to the restrictions set forth in this
26 Article 43 paragraph D, including those for motorist privacy. Copies may be made for CONTRACTOR's

1 records but shall not be furnished to others without written authorization from AGENCIES.

2 C. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings,
3 descriptions, and all other written information submitted to CONTRACTOR in connection with the
4 performance of this AGREEMENT shall not, without prior written Approval of AGENCIES, be used for
5 any purposes other than the performance under this AGREEMENT, nor be disclosed to an entity not
6 connected with such performance.

7 D. CONTRACTOR shall comply with AGENCIES' Privacy Policies and all applicable
8 Governmental Rules, and Business Rules pertaining to confidentiality, privacy, handling, retention,
9 reporting and disclosure, and limiting or restricting collection, use or dissemination of Personally
10 Identifiable Information and shall not sell, transfer, disclose or otherwise use such information for any
11 purpose other than in performance of its duties under this AGREEMENT. CONTRACTOR shall indemnify
12 AGENCIES with regard to any failure to comply with this Article 43 in accordance with Article 14,
13 Indemnification.

14 E. Subject to Paragraph D of this Article 43, in the case of Personally Identifiable Information,
15 CONTRACTOR may use such information for Violation processing and collection and shall release the
16 Personally Identifiable Information to:

17 1. AGENCIES, upon request, for the purposes of carrying out this AGREEMENT or
18 functions with respect to the 91 Express Lanes Project; and

19 2. California DMV, other state DMVs, or other third parties Approved in advance by
20 AGENCIES to receive PII as necessary to assist in collection of debt or payments owing.

21 F. CONTRACTOR shall implement physical, electronic and managerial safeguards to prevent
22 unauthorized access to PII and to implement destruction of records containing PII in accordance with the
23 records retention provisions of this AGREEMENT.

24 G. CONTRACTOR shall not use AGENCIES' names, logos, branding, photographs of the
25 Project, or any other publicity pertaining to the Project in any professional publication, magazine, trade
26 paper, newspaper, seminar or other medium without the express written consent of AGENCIES.

1 H. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be
2 released by CONTRACTOR to any other person or agency except after prior written Approval by
3 AGENCIES, except as necessary for the performance of Work under this AGREEMENT. All press
4 releases, including graphic display information to be published in newspapers, magazines, etc., are to be
5 handled only by AGENCIES unless otherwise agreed to by CONTRACTOR and AGENCIES.

6 **ARTICLE 44. AUDIT AND INSPECTION OF RECORDS**

7 A. CONTRACTOR shall provide AGENCIES, or other agents of AGENCIES, such access to
8 CONTRACTOR's accounting books, records, payroll documents and facilities, as AGENCIES deem
9 necessary. CONTRACTOR shall maintain such books, records, data and documents in accordance with
10 generally accepted accounting principles and shall clearly identify and make such items readily accessible
11 to such parties during CONTRACTOR's performance hereunder and for a period of four (4) years from
12 the date of final payment by AGENCIES. CONTRACTOR shall permit any of the foregoing parties to
13 reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably
14 necessary The State of California, State Auditor, AUTHORITY, COMMISSION, their duly authorized
15 representatives or other agents of AUTHORITY and COMMISSION shall have access to any books,
16 records, payroll documents, facilities and documents of CONTRACTOR and its certified public
17 accountants (CPA) work papers that are pertinent to the AGREEMENT and indirect cost rate (ICR) for
18 audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

19 B. AGENCIES' right to audit books and records directly related to this AGREEMENT shall also
20 extend to all Subcontractors performing Work identified in this AGREEMENT, and such language must
21 be included in CONTRACTOR's agreements with its Subcontractors, resulting from this AGREEMENT.

22 **ARTICLE 45. PROHIBITION ON PROVIDING ADVOCACY SERVICES**

23 CONTRACTOR and all Subcontractors performing Work under this AGREEMENT, shall be
24 prohibited from concurrently representing or lobbying for any other party competing for a contract with
25 AGENCIES, either as a prime contractor or subcontractor. Failure to refrain from such representation
26 may result in termination of this AGREEMENT.

ARTICLE 46. FEDERAL, STATE AND LOCAL LAWS

A. CONTRACTOR warrants that in the performance of this AGREEMENT, it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

ARTICLE 47. PREVAILING WAGE RATES

A. California Labor Code Requirements. CONTRACTOR is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations Title 8, Section 16000, et seq. ("Prevailing Wage Laws), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Work, or any portion thereof, is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, CONTRACTOR agrees to fully comply with such Prevailing Wage Laws, if applicable. CONTRACTOR shall defend, indemnify and hold AGENCIES, their elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and CONTRACTOR shall therefore comply with such Labor Code sections to the fullest extent required by law. It shall be mandatory upon the CONTRACTOR and all Subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

B. If the Work, or any part thereof, is being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, CONTRACTOR and all Subcontractors performing such services must be registered with the Department of Industrial Relations. CONTRACTOR shall maintain registration during the Term and require the same of any subcontractors, as applicable.

1 C. The Project may also be subject to compliance monitoring and enforcement by the
2 Department of Industrial Relations. It shall be CONTRACTOR's sole responsibility to comply with all
3 applicable registration and labor compliance requirements. Any stop orders issued by the Department of
4 Industrial Relations against CONTRACTOR or any Subcontractor that affect CONTRACTOR's
5 performance of the Work, including any delay, shall be CONTRACTOR's sole responsibility. Any delay
6 arising out of or resulting from such stop orders shall be considered CONTRACTOR caused delay and
7 shall not be compensable by AGENCIES. CONTRACTOR shall defend, indemnify and hold AGENCIES,
8 their officials, officers, employees and agents free and harmless from any claim or liability arising out of
9 stop orders issued by the Department of Industrial Relations against CONTRACTOR or any
10 subcontractor.

11 D. CONTRACTOR agrees to insert or cause to be inserted the preceding clause in all
12 subcontracts, which provide for workers to perform work hereunder regardless of the subcontractor tier.

13 **ARTICLE 48. EQUAL EMPLOYMENT OPPORTUNITY**

14 In connection with its performance under this AGREEMENT, CONTRACTOR shall not
15 discriminate against any employee or applicant for employment because of race, religion, color, sex, age
16 or national origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed,
17 and that employees are treated during their employment, without regard to their race, religion, color, sex,
18 age or national origin. Such actions shall include, but not be limited to, the following: employment,
19 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay
20 or other forms of compensation; and selection for training, including apprenticeship.

21 **ARTICLE 49. NOTICE OF LABOR DISPUTE**

22 Whenever CONTRACTOR has acknowledged that any actual or potential labor dispute may
23 delay its performance under this AGREEMENT, CONTRACTOR shall immediately notify and submit all
24 relevant information to AGENCIES. CONTRACTOR shall insert the substance of this entire clause in
25 any subcontract hereunder as to which a labor dispute may delay performance under this AGREEMENT.
26 However, any Subcontractor need give notice and information only to its next higher-tier Subcontractor.

ARTICLE 50. CLEANING UP

A. CONTRACTOR shall at all times keep the Facilities and Sites, including storage areas used by it, clean and free from accumulations of waste material or rubbish. Upon completion of the Work, CONTRACTOR shall leave the Facilities and Sites in a clean, neat and workmanlike condition satisfactory to AGENCIES.

B. After completion of all Work on the Project, and before making application for Final Acceptance of the Work in the Implementation Phase and Project closeout in the Operations and Maintenance Phase, Project closeout by AGENCIES will be withheld until CONTRACTOR has satisfactorily complied with the foregoing requirements for final cleanup of the Project.

C. Full compensation for conforming to the provisions in this Article, not otherwise provided for, shall be considered as included in price of this AGREEMENT and no additional compensation will be allowed therefore.

ARTICLE 51. PROHIBITED INTERESTS

CONTRACTOR covenants that, for the Term, no director, member, officer or employee of AGENCIES or COMMISSION during his/her tenure in office or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE 52. COVENANT AGAINST CONTINGENT FEES

CONTRACTOR warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for CONTRACTOR; to solicit or secure this AGREEMENT; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award, or formation of this AGREEMENT. For breach or violation of this warranty, AGENCIES shall have the right to annul this AGREEMENT without liability, or at its discretion; to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 53. FORCE MAJEURE

Any Party shall be excused from performing its obligations under this AGREEMENT during the time and to the extent that it is prevented from performing by an unforeseeable cause that is beyond its control, including but not limited to: any incidence of fire, flood, or other acts of God; labor strikes, commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by another Party; when satisfactory evidence of such cause is presented to the other Party; and provided further that such nonperformance is unforeseeable, beyond the control and is not due in part or whole, to the fault or negligence of the Party not performing and could not have been avoided or limited in the exercise of due diligence by such Party.

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This AGREEMENT shall be made effective upon execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this OCTA AGREEMENT No. C-9-1177 (RCTC AGREEMENT No. 19-31-059-00) to be executed as of the date of the last signature below.

ORANGE COUNTY TRANSPORTATION AGENCIES

By: _____

Darrell E. Johnson
Chief Executive Officer

APPROVED AS TO FORM:

By: _____

James M. Donich
General Counsel

APPROVED:

By: _____

Kirk Avila
General Manager, Express Lanes Programs

Date: _____

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

By: _____

Anne Mayer
Executive Director

Date: _____

Approved as to Form:

By: _____

Best Best & Krieger LLP
General Counsel

Date: _____

CONTRACTOR

By: _____

Name
Title

Date: _____

EXHIBIT H: MILESTONE PAYMENT SCHEDULE

Milestone Payment Schedule

A. Payments for System Costs (Excluding Hardware, Equipment and Off-the-Shelf Software)				
Payment Number	Payment Milestone	% Paid	Cum % Paid	\$ -
A-1	Notice to Proceed (Mobilization)	5.00%	5.00%	\$ -
A-2	Baseline Project Management Plan, Software Development Plan and Quality Assurance Plan Approved	5.00%	10.00%	\$ -
A-3	Requirements Traceability Matrix Approved	5.00%	15.00%	\$ -
A-4	System Detailed Design Document Approved	8.00%	23.00%	\$ -
A-5	Approval of all Remaining BOS Design, Implementation, Transition, Training, Disaster Recovery, Maintenance Plans	5.00%	28.00%	\$ -
A-6	Operations Plan, Staffing and Human Resources Plan, Reporting and Reconciliation Plan and SOPs Approved	5.00%	33.00%	\$ -
A-7	Master Test Plan Approved	4.00%	37.00%	\$ -
A-8	Software Walkthrough and Update of RTM Approved	4.00%	41.00%	\$ -
A-9	Unit Testing Approved	4.00%	45.00%	\$ -
A-10	System Integration Testing Approved	4.00%	49.00%	\$ -
A-11	User Acceptance Testing Approved	5.00%	54.00%	\$ -
A-12	Regression Testing Approved	3.00%	57.00%	\$ -
A-13	Approval of all Training Materials and Manuals	3.00%	60.00%	\$ -
A-14	Training Completed	4.00%	64.00%	\$ -
A-15	Onsite Installation and Commissioning Testing (includes updated SDDD, traceability matrix and business rules documents), Data Migration, Transition and Go-Live Testing Approved	6.00%	70.00%	\$ -
A-16	Acceptance of Operational Readiness Demonstration	5.00%	75.00%	\$ -
A-17	Go-Live	10.00%	85.00%	\$ -
A-18	Operational and Acceptance Testing Approved	10.00%	95.00%	\$ -
A-19	BOS Acceptance	5.00%	100.00%	\$ -

B. Payments for Hardware, Equipment and Off-the-Shelf Software				
Payment Number	Payment Milestone	% Paid	Cum.% Paid	\$ -
B-1	Ordering Approved by Agencies and Verified	10.00%	10.00%	\$ -
B-2	Verified Received	45.00%	55.00%	\$ -
B-3	Verified Installed in Final Configuration and Location	45.00%	100.00%	\$ -

**EXHIBIT I: LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL
SPECIFICATIONS**

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS**PART I – GENERAL****1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS**

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC) requirements of this safety specification, project site requirements, bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work, contracts or agreements with the Authority. Additionally, manufacturer requirements are considered incorporated by reference as applicable to this scope of work.
- B. Observance of repeated unsafe acts or conditions, serious violation of safety standards, non-conformance of Authority health, safety and environmental compliance department (HSEC) requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor or its subcontractors may be cause for termination of scope or agreements with the Authority, at the sole discretion of the Authority.
- C. The health, safety, and environmental requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be planned and performed, and safe conditions shall be maintained during the course of this work scope.
- D. The Authority Project Manager shall be responsible to ensure a safety orientation is conducted of known potential hazards and emergency procedures for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to commencement of the project.
- E. The Contractor shall ensure that all Contractor vehicles, including those of its subcontractors, suppliers, vendors and employees are parked in designated parking areas, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots.
- F. California Code of Regulations (CCR) Title 8 Standards are minimum requirements; each Contractor is encouraged to exceed minimum requirements. When the Contractor's safety requirements exceed statutory standards, the more stringent requirements shall be achieved for the safeguard of public and workers.
- G. INJURY AND ILLNESS PREVENTION PLAN

The Contractor shall submit to the Authority, a copy of their company Injury and Illness Prevention Plan (IIPP) in accordance with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP

shall be implemented and enforced by the Contractor and its sub-tier contractors, suppliers, and vendors.

- H. Contractor shall provide a copy of the Policy or Program of Company's Substance Abuse Prevention Policy that complies with the most recent Drug Free Workplace Act.

1.2 HEAT ILLNESS PREVENTION PROGRAM

- A. Contractor shall provide a copy of their company Heat Illness Prevention Program in accordance with CCR Title 8, Section 3395, Heat Illness Prevention.

1.3 HAZARD COMMUNICATION

- A. Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to use on Authority property and/or project work areas Contractor shall provide the Authority Project Manager copies of MSDS for all applicable products used, if any.
- B. All chemicals including paint, solvents, detergents and similar substances shall comply with South Coast Air Quality Management District (SCAQMD) rules 103, 1113, and 1171.
- C. The Contractor shall protect property and water resources from fuels and similar products throughout the duration of the contract. Contractor shall comply with Storm Water Pollution Prevention Plan (SWPPP) requirements.

1.4 INCIDENT NOTIFICATION AND INVESTIGATION

- A. The Authority shall be promptly notified of any of the following types of incidents:
 - 1. Damage to Authority property (or incidents involving third party property damage);
 - 2. Reportable and/or Recordable injuries (as defined by the U. S. Occupational Safety and Health Administration);
 - 3. Incidents impacting the environment, i.e. spills or releases on Authority property.
- B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the general public that arise from the performance of Authority contract work. An immediate verbal notice followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.
- C. A final written incident investigative report shall be submitted within seven (7) calendar days, and include the following information. The current status of anyone injured, photos of the incident area, detailed description of what happened, the

contributing factors that lead to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of the task planning documentation, and the corrective action initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report acceptable to OCTA.

1.5 PERSONAL PROTECTIVE EQUIPMENT

- A. The Contractor, its subcontractors, suppliers, and employees are required to comply with applicable personal protective equipment (PPE) requirements while performing work at any Authority project or property. Generally minimum PPE requirements include eye protection; hearing protection, head protection, class 2 safety reflective vests, and appropriate footwear.
- B. The Contractor, its subcontractors, suppliers, and employees are required to provide their own PPE, including eye, head, foot, and hand protection, safety vests, or other PPE required to perform their work safely on Authority projects or property. The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.

1.6 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. OCTA Yard Safety Rules

END OF SECTION

FORM A: OFFEROR'S QUESTIONS FORM

Offeror's Questions Form

Question No.	Page	Section	Section Description	Offeror's Question	Agencies Response
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

FORM B: CAMPAIGN CONTRIBUTION DISCLOSURE FORMS

CAMPAIGN CONTRIBUTION DISCLOSURE FORM B-1

Information Sheet

ORANGE COUNTY TRANSPORTATION AUTHORITY

The attached Campaign Contribution Disclosure Form must be completed by applicants for, or persons who are the subject of, any proceeding involving a license, permit, or other entitlement for use pending before the Board of Directors of the OCTA or any of its affiliated agencies. (Please see next page for definitions of these terms.)

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

- A. If you are an applicant for, or the subject of, any proceeding involving a license, permit, or other entitlement for use, you are prohibited from making a campaign contribution of more than \$250 to any board member or his or her alternate. This prohibition begins on the date your application is filed or the proceeding is otherwise initiated, and the prohibition ends three months after a final decision is rendered by the Board of Directors. In addition, no board member or alternate may solicit or accept a campaign contribution of more than \$250 from you during this period.
- B. These prohibitions also apply to your agents, and, if you are a closely held corporation, to your majority shareholder as well. These prohibitions also apply to your subcontractor(s), joint venturer(s), and partner(s) in this proceeding. Also included are parent companies and subsidiary companies directed and controlled by you, and political action committees directed and controlled by you.
- C. You must file the attached disclosure form and disclose whether you or your agent(s) have in the aggregate contributed more than \$250 to any board member or his or her alternate during the 12-month period preceding the filing of the application or the initiation of the proceeding.
- D. If you or your agent have in the aggregate contributed more than \$250 to any individual board member or his/or her alternate during the 12 months preceding the decision on the application or proceeding, that board member or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the board member or alternate returns the campaign contribution within 30 days from the time the director knows, or should have known, about both the contribution and the fact that you are a party in the proceeding. The Campaign

Contribution Disclosure Form should be completed and filed with your proposal, or with the first written document you file or submit after the proceeding commences.

1. A proceeding involving "a license, permit, or other entitlement for use" includes all business, professional, trade and land use licenses and permits, and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor or personal employment contracts), and all franchises.
2. Your "agent" is someone who represents you in connection with a proceeding involving a license, permit or other entitlement for use. If an individual acting as an agent is also acting in his or her capacity as an employee or member of a law, architectural, engineering, consulting firm, or similar business entity, both the business entity and the individual are "agents."
3. To determine whether a campaign contribution of more than \$250 has been made by you, campaign contributions made by you within the preceding 12 months must be aggregated with those made by your agent within the preceding 12 months or the period of the agency, whichever is shorter. Contributions made by your majority shareholder (if a closely held corporation), your subcontractor(s), your joint venturer(s), and your partner(s) in this proceeding must also be included as part of the aggregation. Campaign contributions made to different directors or their alternates are not aggregated.
4. A list of the members and alternates of the Board of Directors is attached.

This notice summarizes the major requirements of Government Code Section 84308 of the Political Reform Act and California Code of Regulations, Title 2 Sections 18438-18438.8.

ORANGE COUNTY TRANSPORTATION AUTHORITY
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP Number: _____ RFP Title: _____

Was a campaign contribution made to any OCTA Board Member within the preceding 12 months, regardless of dollar amount of the contribution by either the proposing firm, proposed subconsultants and/or agent/lobbyist? Yes _____ No _____

If no, please sign and date below.

If yes, please provide the following information:

Prime Contractor Firm Name: _____

Contributor or Contributor Firm's Name: _____

Contributor or Contributor Firm's Address: _____

Is Contributor:

- | | | |
|---|-----------|----------|
| <input type="radio"/> The Prime Contractor | Yes _____ | No _____ |
| <input type="radio"/> Subconsultant | Yes _____ | No _____ |
| <input type="radio"/> Agent/Lobbyist hired by Prime
to represent the Prime in this RFP | Yes _____ | No _____ |

Note: Under the State of California Government Code section 84308 and California Code of Regulations, Title 2, Section 18438, campaign contributions made by the Prime Contractor and the Prime Contractor's agent/lobbyist who is representing the Prime Contractor in this RFP must be aggregated together to determine the total campaign contribution made by the Prime Contractor.

Identify the Board Member(s) to whom you, your subconsultants, and/or agent/lobbyist made campaign contributions, the name of the contributor, the dates of contribution(s) in the preceding 12 months and dollar amount of the contribution. Each date must include the exact month, day, and year of the contribution.

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Date: _____

Signature of Contributor

Print Firm Name

Print Name of Contributor

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED Agencies**

Board of Directors

Tim Shaw, Chairman
Steve Jones, Vice Chairman
Lisa A. Bartlett, Director
Doug Chaffee, Director
Laurie Davies, Director
Barbara Delgleize, Director
Andrew Do, Director
Michael Hennessey, Director
Gene Hernandez, Director
Jose F. Moreno, Director
Joseph Muller, Director
Mark A. Murphy, Director
Richard Murphy, Director
Miguel Pulido, Director
Michelle Steel, Director
Donald P. Wagner
Greg Winterbottom, Director



RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DISCLOSURE OF CAMPAIGN CONTRIBUTIONS TO COMMISSIONERS

Government Code Section 84308, 2 California Code of Regulations 18438.1, Et
Seq

No Commissioner of the Riverside County Transportation Commission shall receive or solicit a campaign contribution of more than \$250 from Bidder, or Bidder's agent, during the time of: 1) Bid solicitation; 2) Consideration of Bids received; and, 3) Awarding of a contract based on a Bid (collectively referred to as the "Proceeding"), and for 3 months following the conclusion of the Proceeding. This prohibition does not apply to the awarding of contracts that are competitively bid. In addition, Commissioners cannot participate in any such matters if they have received more than \$250 in campaign contributions within the last year from anyone financially interested in the Proceeding, such as Bidder and/or Bidder's agent.

Pursuant to these requirements, Bidder shall disclose any campaign contribution in an amount of more than \$250 made by Bidder, and/or Bidder's agent, to any Commissioner within 12 months from the date of these Bid Documents/Request For Proposals (as applicable). For the purposes of this disclosure obligation, contributions made by Bidder within the preceding 12 months shall be aggregated with those made by Bidder's agent within the preceding 12 months or the period of the agency relationship between Bidder and Bidder's agent, whichever is shorter. In addition, Bidder and/or Bidder's agent shall not make a contribution of more than \$250 to a Commissioner during the Proceeding and for 3 months following the conclusion of the Proceeding.

The disclosure by Bidder, as set forth, herein, shall be incorporated into the written record of the Proceeding and shall be made available to the public for inspection and copying.

The following is a list of the Commissioners of the Riverside County Transportation Commission:

Kevin Jeffries, County of Riverside, District 1	Michael Wilson / Glenn Miller, City of Indio
John F. Tavaglione, County of Riverside, District 2	Brian Berkson / Verne Lauritzen, City of Jurupa Valley
Chuck Washington, County of Riverside, District 3	Kathleen Fitzpatrick / Robert Radi, City of La Quinta
V. Manuel Perez, County of Riverside, District 4	Bob Magee / Natasha Johnson, City of Lake Elsinore
Marion Ashley, County of Riverside, District 5	Neil Winter / John Denver, City of Menifee
Deborah Franklin / Art Welch, City of Banning	Victoria Baca / Ulises Cabrera, City of Moreno Valley
Lloyd White / Nancy Carroll, City of Beaumont	Rick Gibbs / Jonathan Ingram, City of Murrieta
Joseph DeConinck / Tim Wade, City of Blythe	Berwin Hanna / Ted Hoffman, City of Norco
Jim Hyatt / Linda Molina, City of Calimesa	Jan Harnik / Kathleen Kelly, City of Palm Desert
Randall Bonner/ Vicki Warren, City of Canyon Lake	Lisa Middleton / Jon R. Roberts, City of Palm Springs
Greg Pettis / Shelley Kaplan, City of Cathedral City	Michael M. Vargas / Rita Rogers, City of Perris
Steven Hernandez / To Be Appointed, City of Coachella	Ted Weill / Charles Townsend, City of Rancho Mirage
Karen Spiegel / Randy Fox, City of Corona	Rusty Bailey / Andy Melendrez, City of Riverside
Scott Matas / Russell Betts, City of Desert Hot Springs	Andrew Kotyuk / Scott Miller, City of San Jacinto
Adam Rush / Clint Lorimore, City of Eastvale	Michael S. Naggar / Matt Rahn, City of Temecula
Linda Krupa / Russ Brown, City of Hemet	Ben Benoit / Timothy Walker, City of Wildomar
Dana Reed / To Be Appointed, City of Indian Wells	John Bulinski, Governor's Appointee Caltrans District 8



I/We hereby disclose the following political contributions of more than \$250 made within the preceding 12 months and for 3 months following the conclusion of the Proceeding to any Commissioner:

<u>Date of Contribution</u>	<u>Amount of Contribution</u>	<u>Recipient</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Date of Disclosure (Same As Bid Date): _____

BIDDER INFORMATION:

Signature of Bidder

Name

Title

Company

Address

City, State, and Zip Code

FORM C: STATUS OF PAST AND PRESENT CONTRACTS

STATUS OF PAST AND PRESENT CONTRACTS

On the form provided below, Offeror shall list the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract.

A separate form must be completed for each contract. Offeror shall provide an accurate contact name and telephone number for each contract and indicate the term of the contract and the original contract value. Offeror shall also provide a brief summary and the current status of the litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations. If the contract was terminated, list the reason for termination.

Offeror shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of Offeror's proposal. Each form must be signed by an officer of the Offeror confirming that the information provided is true and accurate.

Project city/agency/other:	
Contact Name:	Phone:
Project Award Date:	Original Contract Value:
Term of Contract:	
(1) Litigation, claims, settlements, arbitrations, or investigations associated with contract:	
(2) Summary and Status of contract:	
(3) Summary and Status of action identified in (1):	
(4) Reason for termination, if applicable:	

By signing this Form entitled "Status of Past and Present Contracts," I am affirming that all of the information provided is true and accurate.

Name

Date

Title

FORM D: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

The following form shall be completed for each technical and/or contractual exception or deviation that is submitted by Offeror for review and consideration by Agencies. The exception and/or deviation must be clearly stated along with the rationale for requesting the exception and/or deviation. If no technical or contractual exceptions or deviations are submitted as part of the original proposal, Offerors are deemed to have accepted Agencies' technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibits B-D) and Proposed Agreement (Exhibit G). Offerors will not be allowed to submit this form or any contractual exceptions and/or deviation after the proposal submittal date identified in the RFP. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed by Agencies.

Offeror: _____

RFP No.: _____ RFP Title: _____

Deviation or Exception No.: _____

Check one:

- Scope of Work (Technical) _____
- Proposed Agreement (Contractual) _____

Reference Section/Exhibit: _____ Page/Article No. _____

Complete Description of Deviation or Exception:

Rationale for Requesting Deviation or Exception:

Area Below Reserved for Authority Use Only:

<hr/> <hr/>

FORM E: SURETY COMMITMENT LETTER

SURETY COMMITMENT LETTER

TO: Agency Name

We have reviewed the proposal of _____
(Offeror)

(Address)

for the [RFP Title] for which Proposals will be received on: _____ (Proposal Due Date)

and wish to advise that should this Proposal of the Offeror be accepted and the Contract awarded to, such Offeror, this company agrees to become the surety and provide the Payment and Performance Bonds required by the Contract for both the Implementation and Operations and Maintenance Phases. Such bonds will be in the amounts identified in the Price Proposal, and referenced in Agreement, Article 13, Bonds, with terms of the bonds as also provided in that article.

We are duly authorized to do business in the State of California

Surety Company/Address:

(Authorized Signature)

ATTEST:

[Attach Power of Attorney]

(Corporate Seal, if any. If no seal, write "No Seal" across this place and sign.)

FORM F: ESCROW AGREEMENT

FORM OF INTELLECTUAL PROPERTY ESCROW AGREEMENT

Account Number _____

This Intellectual Property Escrow Agreement ("Agreement") is effective _____, 201_ among _____, a _____ corporation ("IP Escrow Agent"), _____, a _____ corporation ("Depositor"), and the Orange County Transportation Authority and Riverside County Transportation Commission, public entities of the State of California ("OCTA") together referred to as ("Agencies"), who collectively may be referred to in this Agreement as the parties ("Parties").

A. Depositor and Agencies have entered or will enter into a Contract for Back Office System and Customer Services Center Operations Services for the 91 Express Lanes in Orange and Riverside Counties, California (the "Contract"). Unless the context otherwise requires, capitalized terms used in this Agreement have the meanings given in the Contract.

B. Under the Contract, Depositor has granted Agencies licenses to use certain intellectual property, software and supporting materials, and Depositor will from time to time modify, add to, refine, substitute, revise, enhance, update, revise, upgrade and/or correct such software and supporting materials and will submit these updated software development documents on an ongoing basis as the same occur, but at a minimum with each monthly invoice for (a) the D&D Work during the Delivery Phase, (b) Total O&M Price during the O&M Term or (c) compensation for Software maintenance services during the Software Maintenance Option Period, if any.

C. Depositor has agreed in the Contract to deposit into escrow with IP Escrow Agent the Intellectual Property and IP Materials including, without limitation, related documentation of Software required to be delivered as part of the Toll Services and during any Software Maintenance Option Period, if any, including Software Source Code in ASCII format, on industry standard media and source code listings in human readable form of the Software as well as paper and electronic copies of the functional specifications and design specifications, code and documentation for tests used by Depositor to verify Software behavior, and user and technical documentation (all of which, together with modifications, additions, enhancements, updates, revisions, upgrades and corrections thereto and thereof, and all other supplementary deposits under Section 1.1 below, being collectively referred to in this Agreement as the "Software Source Code").

D. Depositor and/or its Software suppliers desire to avoid disclosure and release of the Software Source Code except under certain limited circumstances.

E. The availability of the Intellectual Property (including without limitation Software Source Code) to Agencies is critical to Agencies' business and, therefore, Agencies needs access to the Software Source Code under certain limited circumstances.

F. Depositor and Agencies desire to establish an escrow with IP Escrow Agent to provide for the retention, administration and controlled access of the Intellectual Property (including without limitation Software Source Code).

G. IP Escrow Agent has consented to act as IP Escrow Agent and to receive and hold the current version and any future versions of the Intellectual Property and IP Materials (including without limitation Software Source Code).

H. The parties desire this Agreement to be supplementary to the Contract pursuant to 11 United States Bankruptcy Code, Section 365(n)(1)(B).

NOW, THEREFORE, Depositor and Agencies hereby engage IP Escrow Agent to serve as IP Escrow Agent for the Intellectual Property and IP Materials, IP Escrow Agent hereby accepts such engagement, and the Parties hereby agree to the establishment and administration of an escrow for the

Intellectual Property (including without limitation Software Source Code), on the following terms and conditions.

SOURCE CODE ESCROW AGREEMENT

SECTION 1. DEPOSITS

1.1. Obligation to Make Deposits.

(a) Immediately upon execution of this Agreement, Depositor shall deposit Pre-Existing Contractor Intellectual Property and Third Party Intellectual Property (with the exception of the COTS Software that is listed in Exhibit 18) to be used in connection with the Toll Services with IP Escrow Agent.

(b) Based on invoices for Payment Milestones, Depositor shall deposit the then current version of the Project Intellectual Property reflecting modifications and enhancements to such Pre-Existing Contractor Intellectual Property or Third Party Intellectual Property under development by Depositor with the IP Escrow Agent. Depositor shall be required to submit updated IP Materials reflecting the then current version of the Project Intellectual Property with each invoice.

(c) Not later than the date a Notice of BOS Acceptance is issued by Agencies, Depositor shall deposit with IP Escrow Agent the then current approved and accepted version of the Project Intellectual Property that has been developed for Toll Services.

(d) If during any calendar month after the date a Notice of BOS Acceptance is issued by Agencies, Depositor completes and installs in or for the BOS Work any modification, addition, enhancement, update, revision, upgrade or correction of or to any of the escrowed Software Source Code, it shall deposit with IP Escrow Agent, within 30 days after the end of such calendar month, each such modification, addition, enhancement, update, revision, upgrade and correction, and a modified Attachment A identifying the same. Similarly, if Depositor identifies any additional Intellectual Property or IP Materials to be deposited pursuant to Article 25.D. of the Contract, it shall deposit with IP Escrow Agent such along with a modified Attachment A identifying the same within 30 days following the end of the calendar quarter in which such identification is made.

(e) Each deposit under subsection (d) above shall be added to the existing deposit. Each deposit under subsections (b) or (c) above shall be listed on a modified Attachment A and Depositor shall sign each modified Attachment A. Attachment A and each modified Attachment A shall be held and maintained separately within the escrow account. IP Escrow Agent shall create an independent record which documents the activity for Attachment A and each modified Attachment A. The processing of all deposits under this Section 1.1 shall be in accordance with Sections 1.2 through 1.6 below.

(f) Notwithstanding any other provision of this Agreement, Depositor shall have no obligation to deposit with the IP Escrow Agent any Software Source Code for Off-the-Shelf Software.

1.2. Identification of Tangible Media. Prior to each delivery of the IP Materials to IP Escrow Agent, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Intellectual Property are written or stored. Additionally, with each delivery Depositor shall complete Attachment A to this Agreement or a modified Attachment A by listing each such tangible media by the item label description, the type of media and the quantity, and the identity of the owner of the Intellectual Property (whether Depositor or a Software Supplier). Depositor shall sign each Attachment A or modified Attachment A and deliver it to IP Escrow Agent with the IP Materials. Such signature shall constitute Depositor's representation and warranty that Attachment A is true, accurate and complete. Unless and until Depositor makes the initial deposit with IP Escrow Agent, IP Escrow Agent shall have no

obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the account as required in Section 2.2 below.

1.3. Deposit Inspection. Within three Business Days after IP Escrow Agent receives IP Materials and Attachment A or a modified Attachment A, IP Escrow Agent shall conduct a deposit inspection by visually matching the labeling of the tangible media containing the Source Code to the item descriptions and quantity listed on Attachment A or modified Attachment A. In addition to the deposit inspection, Agencies may elect to cause a verification of the Intellectual Property (specifically including Software Source Code) at any time in accordance with Section 1.6 below.

1.4. Acceptance of Deposit. Immediately upon completion of each deposit inspection, if IP Escrow Agent determines that the labeling of the tangible media matches the item descriptions and quantity on Attachment A or the modified Attachment A, IP Escrow Agent shall date and sign Attachment A or the modified Attachment A and mail a copy thereof to Depositor and Agencies. Immediately upon completion of each deposit inspection, if IP Escrow Agent determines that the labeling does not match the item descriptions or quantity on Attachment A or the modified Attachment A, IP Escrow Agent shall (a) note the discrepancies in writing on Attachment A or the modified Attachment A; (b) date and sign Attachment A or the modified Attachment A with the exceptions noted; and (c) mail a copy of Attachment A or the modified Attachment A to Depositor and Agencies. IP Escrow Agent's acceptance of the deposit occurs upon the signing of Attachment A or the modified Attachment A by IP Escrow Agent. Delivery of the signed Attachment A or the modified Attachment A to Agencies is Agencies' notice that the Software Source Code have been received and accepted by IP Escrow Agent.

1.5. Depositor's Representations. Depositor represents and warrants to Agencies as follows:

- (a) Depositor lawfully possesses all of the IP Materials and the Intellectual Property contained therein as deposited with IP Escrow Agent;
- (b) With respect to all of the IP Materials and the Intellectual Property contained therein, Depositor has the right and authority to grant to IP Escrow Agent and Agencies the rights as provided in this Agreement;
- (c) The IP Materials and the Intellectual Property contained therein are not subject to any lien or other encumbrance;
- (d) The IP Materials and the Intellectual Property contained therein consist of the proprietary technology and other materials identified either in the Contract or Attachment A, as applicable; and
- e. The IP Materials are readable and useable in their current form or, if any portion of the IP Materials and the Intellectual Property contained therein is encrypted, the decryption tools and decryption keys have also been deposited.

1.6. Verification. Agencies may, at Agencies' expense, cause a verification of any IP Materials (specifically including Software Source Code). Agencies shall notify Depositor and IP Escrow Agent of Agencies' request for verification. Depositor shall have the right to be present at the verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the IP Materials. If a verification is elected after the IP Materials have been delivered to IP Escrow Agent, then only IP Escrow Agent, or at IP Escrow Agent's or Agencies' election an independent person or company selected and supervised by IP Escrow Agent or Agencies, may perform the verification. If Agencies elects to have an independent person or company perform the verifications, its election and selection shall prevail over any such election by IP Escrow Agent. The verification shall be conducted in accordance with the verification procedures specified in the completed form of Attachment A accompanying Depositor's deposit of the relevant IP Materials with IP Escrow Agent. Such verification shall determine the relevance, completeness, currency, accuracy and functionality of the IP Materials and the Intellectual Property contained therein and, specifically as to Software Source Code, whether the deposit is complete. If IP Escrow Agent or a person or company it selects performs the verification, IP Escrow Agent shall deliver to Agencies a written report detailing the verification not later than 30 days after

Agencies delivers Notice requesting such verification. Any verification shall take place either at IP Escrow Agent's location or an agreed upon location during IP Escrow Agent's regular business hours. If Agencies elects to have an independent person or company perform the verification, then such entity shall adhere to the confidentiality requirements of the Contract. If IP Escrow Agent or the independent person performing the verification determine that the verification procedures specified in the completed Attachment A are insufficient to enable verification of the relevant IP Materials and the Intellectual Property contained therein, then upon the request of Escrow Holder or Agencies, Depositor shall cooperate in good faith to supplement and/or modify the verification procedures as necessary and appropriate to facilitate such verification.

1.7. Removal of IP Materials. The IP Materials and the Intellectual Property contained therein may be removed and/or exchanged only on written instructions signed by both the Depositor and Agencies, or as otherwise provided in this Agreement.

1.8. Inspection. Agencies and Depositor shall be entitled, during normal business hours, to inspect, under the supervision of an officer of IP Escrow Agent and at IP Escrow Agent's facilities, the physical and technical status and condition of the IP Materials and the Intellectual Property contained therein. The party undertaking the inspection shall provide Notice of the pending inspection to the other party, five Business Days prior to the scheduled date of the inspection. The party receiving the notice shall have the right to be present at the inspection, but such presence is not a condition precedent to the inspecting party's right to proceed with inspection.

SECTION 2. CONFIDENTIALITY AND RECORD KEEPING

2.1. Confidentiality. IP Escrow Agent shall maintain the IP Materials and the Intellectual Property contained therein in a secure, environmentally safe, fireproofed vault or locked facility which is accessible only to authorized representatives of IP Escrow Agent. IP Escrow Agent shall have the obligation to reasonably protect the confidentiality of the Intellectual Property. Except as provided in this Agreement, IP Escrow Agent shall not disclose, transfer, make available or use the Intellectual Property or any IP Materials. IP Escrow Agent shall not disclose the content of this Agreement to any third party. If IP Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the IP Materials and the Intellectual Property contained therein, IP Escrow Agent shall immediately notify the other Parties unless prohibited by law. It shall be the responsibility of Depositor and/or Agencies to challenge any such order; provided, however, that IP Escrow Agent does not waive its rights to present its position with respect to any such order. IP Escrow Agent shall not be required to disobey any order from a court or other judicial tribunal. (See Section 7.5 below for notices of requested orders.)

2.2. Status Reports. IP Escrow Agent shall issue to Depositor and Agencies a report profiling the account history at least semi-annually. IP Escrow Agent may provide copies of the account history pertaining to this Agreement upon the request of any other Party.

2.3. Audit Rights. During the term of this Agreement, Depositor and Agencies may each inspect the written records of IP Escrow Agent pertaining to this Agreement. Any inspection shall be held during normal business hours and following reasonable prior Notice.

SECTION 3. TITLE TO IP MATERIALS

3.1 Title to IP Materials. Title to the IP Materials which embody Intellectual Property is vested in Agencies pursuant to Article 24 of the Contract, but is subject to the provisions of this Agreement on access to and release of such IP Materials.

3.2 Disclaimer. Depositor and IP Escrow Agent hereby disclaim and relinquish any title to or ownership of the IP Materials which embody Intellectual Property. Without limiting the foregoing, IP Escrow Agent hereby disclaims and relinquishes any title to or ownership of Software Source Code deposited with IP Escrow Agent under this Agreement.

SECTION 4. RELEASE OF DEPOSIT

4.1. Release Conditions. As used in this Agreement, "Release Condition" shall mean any of the following:

- (a) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, proceedings under Title 7 of the United States Code, as amended, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors are instituted by or against Depositor, or by or against any owner of Third Party Intellectual Property (other than bankruptcy proceedings instituted by Depositor or any owner of Third Party Intellectual Property against third parties), and, if instituted against Depositor or any owner of Third Party Intellectual Property, are allowed against Depositor or any owner of Third Party Intellectual Property or are consented to or are not dismissed, terminated or otherwise nullified within 60 calendar days after such institution;
- (b) A custodian, trustee or receiver is appointed for Depositor or any owner of Third Party Intellectual Property or any substantial part of its assets;
- (c) Depositor or any owner of Third Party Intellectual Property makes or attempts to make an assignment for the benefit of creditors;
- (d) Depositor or any owner of Third Party Intellectual Property generally fails to pay its debts when they are due or admits of its inability to pay its debts;
- (e) Depositor or any owner of Third Party Intellectual Property fails to provide necessary and commercially feasible updates and maintenance releases, or otherwise is in material breach of its software development and/or support obligations under the Contract;
- (f) The Contract is terminated in whole pursuant to its terms because of an "Event of Default";
- (g) Depositor or any owner of Third Party Intellectual Property ceases to do business in the ordinary course or is unwilling or unable to perform its obligations under the Contract; or
- (h) Depositor does not continue to provide updates and maintenance releases, or otherwise breaches its software maintenance and/or support obligations under the Software Maintenance Option during the Software Maintenance Option Period.

4.2. Filing For Release. If Agencies believes in good faith that a Release Condition has occurred, Agencies may provide to IP Escrow Agent Notice of the occurrence of the Release Condition and a request for the release of the IP Materials and incorporated Intellectual Property. If the Release Condition pertains only to an owner of Third Party Intellectual Property, Agencies' Notice shall so indicate. Immediately upon receipt of such Notice, IP Escrow Agent shall provide a copy of the Notice to Depositor by commercial express mail.

4.3. Contrary Instructions. From the date IP Escrow Agent mails the Notice requesting release of the IP Materials and incorporated Intellectual Property, Depositor shall have ten days to deliver to IP Escrow Agent contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean the written representations and warranties, without qualification, exception or condition, by an authorized officer or authorized delegate of Depositor that (a) the person signing for Depositor is an authorized officer or authorized delegate of Depositor and (b) a Release Condition has not occurred or has been cured. Immediately upon receipt of Contrary Instructions within such ten day period, IP Escrow Agent shall send a copy to Agencies by commercial express mail. Additionally, IP Escrow Agent shall provide Notice to Depositor and Agencies that there is a dispute to be resolved pursuant to Section 7.3 of this Agreement. Subject to Section 5.2 of this Agreement, IP Escrow Agent shall continue to store the IP Materials and Intellectual Property without release pending (i) instructions from Depositor and Agencies; (ii) dispute resolution pursuant to Section 7.3; or (iii) order of a court. Contrary Instructions received after such ten day

period shall be automatically null and void, shall have no force or effect, and shall be disregarded by IP Escrow Agent.

4.4. Release of Deposit.

(a) If IP Escrow Agent does not receive Contrary Instructions from the Depositor within such ten day period, IP Escrow Agent is authorized to, and shall, immediately release the IP Materials and incorporated Intellectual Property to Agencies. If the Release Condition pertains only to an owner of Third Party Intellectual Property, then IP Escrow Agent shall only release the IP Materials that (a) are identified on Attachment A as owned by such owner of Third Party Intellectual Property or (b) lacks identification of ownership on Attachment A. Any copying expense will be chargeable to Depositor. This Agreement shall terminate upon the release of all the IP Materials and incorporated Intellectual Property held by IP Escrow Agent.

(b) IP Escrow Agent shall promptly release all or any part of the IP Materials and incorporated Intellectual Property at any time and from time to time upon receipt of Notice signed by both Depositor and Agencies.

(c) IP Escrow Agent shall also release the IP Materials and incorporated Intellectual Property to Agencies at any time as directed or ordered by an arbitration award, by a final judgment of a court of competent jurisdiction, or by other final dispute resolution pursuant to Section 7.3. If Agencies provides to IP Escrow Agent a written opinion of counsel for Agencies to the effect that such award, judgment or resolution is final and not appealable, IP Escrow Agent shall proceed with release in accordance with the award, judgment or resolution and may rely on such legal opinion.

4.5. Right to Use Following Release. Upon release of the IP Materials in accordance with this Section 4, Agencies shall have the right and license to use the released Intellectual Property as provided in the Contract. Agencies shall be obligated to maintain the confidentiality of the released Intellectual Property as provided in the Contract.

SECTION 5. TERM AND TERMINATION

5.1. Term of Agreement. The term of this Agreement shall continue in effect unless and until this Agreement is terminated in accordance with the terms of this Section 5. This Agreement shall be terminated in the event (a) Depositor and Agencies jointly instruct IP Escrow Agent in writing that the Agreement is terminated; or (b) IP Escrow Agent provides Notice to Depositor and Agencies that the Agreement is terminated for nonpayment in accordance with Section 5.2 or by resignation in accordance with Section 5.3. If the IP Materials and incorporated Intellectual Property are subject to another escrow agreement with IP Escrow Agent, IP Escrow Agent reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2. Termination for Nonpayment. In the event fees owed to IP Escrow Agent are not paid when due, IP Escrow Agent shall provide Notice of delinquency to all Parties. Any Party shall have the right to make the payment to IP Escrow Agent to cure the default. If the past due payment is not received in full by IP Escrow Agent within one month of the date of such Notice, then IP Escrow Agent shall have the right to terminate this Agreement at any time thereafter by sending Notice of termination to all Parties. IP Escrow Agent shall have no obligation to take any action under this Agreement so long as any undisputed payment due to IP Escrow Agent remains unpaid and delinquent, except action to hold and safeguard the IP Materials and transfer or dispose of the IP Materials following termination as provided in this Section 5.

5.3. Termination by Resignation. IP Escrow Agent may terminate this Agreement, for any reason, by providing Depositor and Agencies with 90-days' Notice of its intent to terminate this Agreement. Within the 90-day period, the Depositor and Agencies shall use diligent efforts to enter into a substantially similar agreement with another entity willing and able to perform the functions of IP Escrow Agent under this Agreement and shall provide IP Escrow Agent with Notice including instructions authorizing IP Escrow

Agent to forward the IP Materials and incorporated Intellectual Property to another escrow company and/or agent or other designated recipient. IP Escrow Agent shall transfer and dispose of the IP Materials in accordance with any such Notice. If IP Escrow Agent does not receive said Notice within 90 days of the date of IP Escrow Agent's termination Notice, then IP Escrow Agent shall have no obligation to take any action under this Agreement, except action to hold and safeguard the Intellectual Property and transfer or dispose of IP Materials following termination as provided in this Section 5.

5.4. Disposition of IP Materials Upon Termination. Upon termination of this Agreement, IP Escrow Agent shall destroy, return, or otherwise deliver the IP Materials in accordance with Depositor's and Agencies' Notice. If there is no such Notice, IP Escrow Agent may, commence legal action interpleading Depositor and Agencies, deposit the IP Materials with the court in such action and otherwise handle and dispose of the IP Materials in accordance with court order. In no event shall IP Escrow Agent have the right to destroy the IP Materials or return them to Depositor absent written instructions to such effect or final order of a court of competent jurisdiction.

5.5. Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- (a) Depositor's representations and warranties (Section 1.5);
- (b) The obligations of safekeeping and confidentiality with respect to the IP Materials and incorporated Intellectual Property set forth in Section 2.1;
- (c) The rights granted in the sections entitled Right to Transfer Upon Release (Section 3.3) and Right to Use Following Release (Section 4.5), if a release of the IP Materials has occurred prior to termination;
- (d) The obligation to pay IP Escrow Agent any fees and expenses due;
- (e) The obligations of IP Escrow Agent under Section 5.4;
- (f) The provisions of Section 7;
- (g) Any provisions in this Agreement which specifically state they survive the termination of this Agreement; and
- (h) All other provisions which by their inherent character or express terms should survive termination of this Agreement, the expiration of the Contract.

SECTION 6. IP ESCROW AGENT'S FEES

6.1. Fee Payment and Schedule. IP Escrow Agent is entitled to be paid its standard fees and expenses applicable to the services provided, which shall be the responsibility of Agencies. IP Escrow Agent shall notify Agencies at least 60 days prior to any increase in fees. For any service not listed on IP Escrow Agent's standard fee schedule, IP Escrow Agent shall provide a quote prior to rendering the service, if requested.

6.2. Payment Terms. Fees are due 30 days after receipt of an invoice from IP Escrow Agent detailing the services performed and setting forth fees therefor consistent with the then applicable fee schedule. IP Escrow Agent may deliver invoices not more frequently than monthly. Except for action to hold and safeguard the Intellectual Property and transfer or dispose of the IP Materials following termination as provided in this Section 6, IP Escrow Agent shall not be required to perform any service whenever any undisputed outstanding balance owed to IP Escrow Agent is not paid when due.

SECTION 7. LIABILITY AND DISPUTES

7.1. Right to Rely on Instructions. IP Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by IP Escrow Agent to be genuine. Except with respect to a Contrary Instruction that lacks the representation set forth in Section 4.3(a), IP Escrow Agent may assume that any employee of a party to this Agreement who gives any Notice, request, or instruction has the authority to do so. IP Escrow Agent shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any Notice, request or instruction. IP Escrow Agent shall not be responsible for failure to act as a result of causes beyond the reasonable control of IP Escrow Agent.

7.2. Indemnification. Depositor and Agencies each agree to indemnify, defend and hold harmless IP Escrow Agent from any and all Claims and Losses in connection with this escrow arrangement except to the extent such Liabilities were caused by the negligence or willful misconduct of IP Escrow Agent or its breach of this Agreement.

7.3. Dispute Resolution. Any dispute, controversy, claim or difference arising out of, or in connection with, or resulting from this Agreement, its application or interpretation, a breach thereof, or a Contrary Instruction issued hereunder, which cannot be settled amicably by the Parties, shall be subject to resolution in accordance with the dispute resolution provisions of the Contract. IP Escrow Agent agrees to be bound by any such final resolution. Notwithstanding the foregoing, any suit in interpleader brought by IP Escrow Agent under Section 5.4 shall not be by arbitration and may be brought by IP Escrow Agent in any court having jurisdiction.

7.4. Controlling Law. This Agreement shall be governed by and construed in accordance with the law of the State, without regard to conflict of law principles. The venue of any court, judicial or referee proceeding under this Contract shall be in Orange County, California, unless changed by the judicial officer.

7.5. Notice of Requested Order. If any Party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct IP Escrow Agent to take, or refrain from taking, any action, that Party shall:

- (a) Give IP Escrow Agent at least two Business Days' prior Notice of the hearing; and
- (b) Ensure that IP Escrow Agent not be required to deliver the original (as opposed to a copy) of the IP Materials if IP Escrow Agent may need to retain the original in its possession to fulfill any of its other duties under this Agreement.

SECTION 8. GENERAL PROVISIONS

8.1. IP Escrow Agent Representation. IP Escrow Agent represents and warrants to Agencies and Depositor that (a) to the best knowledge of IP Escrow Agent neither it nor any of its personnel has been the subject of any investigation or been convicted or indicted for commission of any crime involving misconduct, corruption, bribery or fraud in connection with any public contract in the State of California, or any other jurisdiction, except as has been specifically disclosed in writing to Agencies and Depositor, and (b) should any such conviction or indictment be obtained or any such investigation commenced prior to the expiration of the term hereof, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or investigation, IP Escrow Agent will immediately disclose it in writing to Agencies and Depositor.

8.2. Entire Agreement. This Agreement (including all Exhibits to this Agreement) contain the entire understanding of the parties with respect to the subject matter of this Agreement and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to their subject matter. IP Escrow Agent is not a party to the Contract between Depositor and Agencies and has no knowledge of any of the terms or provisions of the Contract. IP Escrow Agent's only obligations to Depositor or Agencies are as set forth in this Agreement. No amendment or modification of

this Agreement shall be valid or binding unless signed by all the parties, except that Attachment A need not be signed by Agencies and Attachment B need not be signed.

8.3. This Contract contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to their subject matter.

8.4. Notices. All notices, invoices, payments, deposits and other documents and communications under this Agreement shall be sent as provided in Article 11 of the Contract and given to the parties at the addresses specified in the attached Attachment B. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties.

8.5. Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.6. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. However, IP Escrow Agent shall have no right to assign this Agreement or delegate its duties hereunder without the prior written consent of Depositor and Agencies; and IP Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Agencies unless IP Escrow Agent receives unambiguous and authoritative written evidence of the change of Parties.

8.7. Regulations. Depositor and Agencies are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Intellectual Property may be delivered in accordance with the provisions of this Agreement.

8.8. Liability. No member, officer, or employee of Agencies, Depositor or IP Escrow Agent shall be liable personally hereunder or by reason hereof.

8.9. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties on different counterparts, each of which, when executed, shall be deemed an original, but all of which, taken together, shall constitute one and the same Agreement.

[signatures on next page]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Source Code Escrow Agreement as of the date first written above.

DEPOSITOR:

By: _____
Name: _____
Title: _____

IP ESCROW AGENT:

By: _____
Name: _____
Title: _____

OCTA

**ORANGE COUNTY TRANSPORTATION
AUTHORITY**

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____

RCTC

**RIVERSIDE COUNTY TRANSPORTATION
AUTHORITY**

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____

**ORANGE COUNTY TRANSPORTATION
AUTHORITY**

ATTACHMENT A

DESCRIPTION OF ESCROWED MATERIAL

Depositor Company Name: _____

Account Number _____

Product name _____ Version _____
(Product Name will appear as the Exhibit 1 Name on Account History report)

Owner of Product _____
(Name, address, tel. no., e-mail address)

SOURCE CODE DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item
_____	Disk 3.5" or _____	
_____	DAT tape _____mm	
_____	CD-ROM	
_____	Data cartridge tape _____	
_____	TK 70 or _____ tape	
_____	Magnetic tape _____	
_____	Documentation	
_____	Other _____	

PRODUCT DESCRIPTION:

Environment _____

SOURCE CODE INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

SOURCE CODE VERIFICATION PROCEDURES:

[Insert in space below or provide as separate attachment]

Other required information _____

I certify for **Depositor** that the above described **IP Escrow Agent** has inspected and accepted IP Materials have been transmitted to _____ the above materials (any exceptions are noted above):

Signature: _____ Signature: _____

Print Name: _____ Print Name: _____

Date: _____ Date Accepted: _____

Exhibit A#: _____

Send materials to: IP Escrow Agent, _____ () _____

ATTACHMENT B

DESIGNATED CONTACT

Account Number _____
Notices, deposit material returns and
communications to Depositor should be
addressed to:

Invoices to Depositor pursuant to Section 4.4(a)
should be addressed to:

Company Name: _____

Address: _____

Designated Contact: _____

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____ Email: _____

Verification Contact: _____

Notices and communications to the Agencies
should be addressed to each agency as follows:

Company Name: Orange County Transportation
Authority

Address _____

Designated Contact: _____

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____

Company Name: Riverside County
Transportation Authority

Address _____

Designated Contact: _____

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____

Requests from Depositor or OCTA/and or RCTC to change the designated contact should be given in writing by the designated contact or an authorized employee of Depositor, OCTA, and/or RCTC.

Contracts, IP Materials and Intellectual Property,
notices, invoice inquiries and fee remittances to IP
Escrow Agent should be addressed to:

_____ Date: _____

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____

FORM G: PERFORMANCE BOND

PERFORMANCE BOND

Agreement No. _____

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

That we, _____
hereinafter referred to as "Contractor", as principal, and _____
as surety, are held and firmly bound unto the Orange County Transportation Authority and
Riverside Transportation Commission, State of California, in the sum _____
Dollars, (\$ _____), lawful money of the United States of America, for the
payment of which sum, well and truly to be made, we bind ourselves, jointly and severally, firmly
by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, said Contractor has been awarded and is about to enter into the annexed Agreement
with the Orange County Transportation Authority and Riverside Transportation Authority for the
_____, at the _____ as specified in said Agreement, and is required to give this bond
in connection with the _____ execution thereof;

NOW THEREFORE, if the said Contractor shall well and truly do and perform all of the covenants
and obligations of said Agreement on his part to be done and performed at the times and in the
manner specified herein, then this obligation shall be null and void, otherwise it shall be and
remain in full force and effect; and in the event said Contractor fails to fully perform all
requirements in accordance with the terms and conditions of said Agreement, then surety shall
enforce performance by the Contractor or shall pay the Orange County Transportation Authority
and Riverside County Transportation Commission for the same in an amount not exceeding the
amount specified in this bond; and, further, if in the event suit is brought upon this bond then said
surety shall pay the Orange County Transportation Authority and Riverside Transportation
Authority for reasonable attorneys' fees to be fixed by the court;

PROVIDED, that any changes in the work to be done, or the material to be furnished, whether or
not made pursuant to the terms of said contract, shall not in any way release either the Contractor
or the surety there under, nor shall any extensions of time granted under the provisions of said
contract release either the Contractor or the surety, and notice of such changes or extensions of
the contract is hereby waived by the surety.

WITNESS our hands this _____ day of _____, 201_.

(SEAL)

(Contractor)

By _____

Approved:

(Title)

(SEAL)

(Surety)

By _____

FORM H: PAYMENT BOND

PAYMENT BOND

Agreement No. _____

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS:

That we, _____
hereinafter referred to as "Contractor", as principal, and _____
as surety, are held and firmly bound unto the Orange County Transportation Authority
and Riverside Transportation Commission, State of California, in the sum _____
Dollars, (\$ _____), lawful money of the United States of America, for
the payment of which sum, well and truly to be made, we bind ourselves, jointly and
severally, firmly by these presents.

The Condition of the foregoing obligation is such that,

WHEREAS, said Contractor has been awarded and is about to enter into the annexed
Agreement with the ORANGE COUNTY TRANSPORTATION AUTHORITY and
RIVERSIDE TRANSPORTATION COMMISSION for the **"FEDERAL PUBLIC WORKS
FHWA"** as specified in said Agreement, and is required under the terms of said Agreement
to give this bond in connection with the execution thereof;

NOW, THEREFORE, if said Contractor or a subcontractor fails to pay any of the persons
named in Section 9100 of the Civil Code of the State of California, or amounts due under
the Unemployment Insurance Code with respect to work or labor performed under the
contract, or for any amounts required to be deducted, withheld and paid over to the
Employment Development Department from the wages of employees of said Contractor and
subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with
respect to such work and labor, then said surety will pay for the same, in an amount not
exceeding the sum specified in this bond, and also, in case suit is brought upon this bond,
a reasonable attorney's fee, to be fixed by the court. This bond shall inure to the benefit of
all persons named in Section 9100 of the Civil Code of the State of California so as to give
a right of action to such persons or their assigns in any suit brought upon this bond. **This
bond shall be subject to and include all of the provisions of Title 3 of Part 64 of Division 4 of
the Civil Code of California relating to Payment Bond for Public Works, including but not
confined to, Civil Code Sections 8150 – 8154, inclusive and Sections 9550 - 9566, inclusive.**

PROVIDED, that any changes in the work to be done or the material to be furnished,
whether or not made pursuant to the terms of said contract, shall not in any way release
either the Contractor or the surety thereunder, nor shall any extensions of time granted
under the provisions of said contract release either the Contractor or the surety, and notice
of such alterations or extensions of the contract is hereby waived by the surety.

PAYMENT BOND, PAGE 2

WITNESS our hands this _____ day of _____, 201 ____.

(SEAL)

(Contractor)

By _____

(Title)

Approved:

(Surety)

(SEAL)

By _____

FORM I: OPERATIONS AND MAINTENANCE BOND

FORM OF OPERATIONS AND MAINTENANCE PERFORMANCE BOND

Agreement No. _____

Bond No. _____

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Orange County Transportation Authority and the Riverside Transportation Commission, public entities of the State of California ("AGENCIES"), have awarded _____, a corporation organized under the laws of _____ ("Principal") an Agreement to design, implement, operate and maintain a Back Office System ("BOS Work") and Customer Service Center ("CSC Operations Work") for the 91 Express Lanes;

AND WHEREAS, Principal and AGENCIES have entered into an Agreement bearing the date of _____ ("Agreement") to provide BOS and CSC Work in accordance with the terms of the Agreement;

AND WHEREAS, it is one of the conditions **to achieving BOS Go-Live** under the Agreement that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the "Surety" or "Co-Sureties"), an admitted surety insurer in the State of California, are firmly bound and held unto AGENCIES, in the amount of _____ Dollars (\$_____) ("Bonded Sum") good and lawful money of the United States of America for the payment whereof, well and truly to be paid to AGENCIES, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. The Agreement is incorporated by reference in this Bond.
2. Unless the context otherwise requires, capitalized terms used but not separately defined in this Bond have the meaning given to them in the Agreement.
3. If Principal or its heirs, successors, executors, administrators or assigns shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, obligations and work under the Agreement, including any and all amendments, supplements, and alterations made to the Agreement as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify, defend and save harmless AGENCIES and all other Indemnified Parties, as therein stipulated, then this obligation shall become null and void; otherwise it shall remain in full force and effect. In case suit is brought upon this Bond, the Surety (or Co-Sureties) will pay reasonable attorney's fee to be fixed by the court.
4. The obligations covered by this Bond specifically include the performance of each and every obligation of Principal under the Agreement with respect to the BOS Maintenance and CSC

Operations Work, including its liability for Liquidated Damages and warranties as specified in the Agreement, but not to exceed the Bonded Sum.

5. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Agreement, or in the work to be performed with respect to the BOS Maintenance and CSC Operations Work, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Agreement, or any rescission or attempted rescission of the Agreement or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of AGENCIES seeking to recover from this Bond, or any fraud practiced by any other person other than AGENCIES seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

6. The Surety (or Co-Sureties) agree(s) that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

7. Whenever Principal shall be, and is declared by AGENCIES to be, in default under the Agreement, provided that AGENCIES is not then in material default thereunder, the Surety (or Co-Sureties) shall promptly:

(a) remedy such default, or

(b) complete the work covered by this Bond in accordance with the terms and conditions of the Agreement, or

(c) select a contractor or contractors to complete all work covered by this Bond in accordance with the terms and conditions of the Agreement then in effect, using a contractor or contractors approved by AGENCIES (provided, however, that the Surety may not select Principal or any affiliate of Principal to complete the work for and on behalf of the Surety without AGENCIES's express written consent, in its sole discretion), arrange for a contract meeting the requirements of the Agreement between such contractor or contractors and AGENCIES, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the Agreement Price; but not exceeding, including other costs and damages for which Surety (or Co-Sureties) is (are) liable hereunder, the Bonded Sum.

8. If Surety does not proceed as provided in Paragraph 6 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional Notice from the AGENCIES to Surety demanding that Surety perform its obligations under this Bond, and AGENCIES shall be entitled to enforce any remedy available to AGENCIES.

9. The guarantees contained in this Bond shall survive BOS Maintenance and CSC Operations Work required to be performed during the BOS Maintenance and CSC Operations Term with respect to those obligations of Principal which survive the BOS Maintenance and CSC Operations Term.

10. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that AGENCIES will have no obligation to deal with multiple sureties hereunder. All correspondence from AGENCIES to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of Notice (by personal delivery or by certified mail, return receipt requested) to AGENCIES designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____
_____ on this _____ day of _____, A.D., 20__.

PRINCIPAL:

By: _____

Name:

Title:

Surety (full legal name):

Address:

By: _____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority to sign must be furnished and a Power of Attorney attached.]

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

NOTARY PUBLIC

FORM OF OPERATIONS AND MAINTENANCE PAYMENT BOND

Agreement No. _____

Bond No. _____

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Orange County Transportation Authority ("AUTHORITY") and Riverside County Transportation Commission ("COMMISSION"), public entities of the State of California ("AGENCIES"), have awarded to _____, a corporation organized under the laws of _____ ("Principal") an Agreement to design, implement, operate and maintain a Back Office System ("BOS Work") and Customer Service Center ("CSC Operations Work") for the 91 Express Lanes ;

AND WHEREAS, Principal and AGENCIES have entered into a Toll Services Agreement ("Agreement") bearing the date of _____ to complete BOS and CSC Work in accordance with the terms of the Agreement;

AND WHEREAS, it is one of the conditions to achieving **BOS Go-Live under** the Agreement that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the "Surety" or "Co-Sureties"), an admitted surety insurer in the State of California, are firmly bound and held unto AGENCIES, in the sum of _____ Dollars (\$ _____) ("Bonded Sum") good and lawful money of the United States of America for the payment whereof, well and truly to be paid to AGENCIES, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. The Agreement is incorporated by reference in this Bond. Unless the context otherwise requires, capitalized terms used but not separately defined in this Bond have the meaning given to them in the Agreement.
2. If Principal, its Subcontractors, hires, successors, executors, administrators or assigns shall fail to pay:
 - (a) any of the persons named in Civil Code section 9100 involved in performance of the BOS Maintenance and CSC Operations Work as provided for under the Agreement;
 - (b) any amounts due under the Unemployment Insurance Code with respect to the BOS Maintenance and CSC Operations Work;
 - (c) any amounts required to be deducted, withheld and paid over to 1302 Franchise Tax Board from the wages of employees of the Principal and its Subcontractor pursuant to Revenue and Taxation Code Section 18662 et seq. with respect to such labor; or
 - (d) anyone required to be paid by law

then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void; otherwise it shall remain in full force and effect. In case suit is brought upon this Bond, the Surety (or Co-Sureties) will pay reasonable attorney's fee to be fixed by the court.

3. This Bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 or anyone required to be paid by law under the Agreement so as to give a right of action to such persons or their assigns in any suit brought upon this Bond.

4. This Bond covers all of Principal's payment obligations under the Agreement for the O&M Work (including the Software Maintenance where AGENCIES exercises the Software Maintenance Option), as set forth in the Agreement

5. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Agreement, or in the work to be performed with respect to the BOS Maintenance and CSC Operations Work, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Agreement, or any rescission or attempted rescission of the Agreement or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of AGENCIES seeking to recover from this Bond, or any fraud practiced by any other person other AGENCIES seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it hereby waives notice of such changes, extension of time, alterations, additions, omissions or other modifications.

6. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that AGENCIES will have no obligation to deal with multiple sureties hereunder. All correspondence from AGENCIES to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of Notice (by personal delivery or by certified mail, return receipt requested) to AGENCIES designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

7. This bond shall inure to the benefit of the persons named in Civil Code section 9100 so as to give a right of action to such persons and their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____
_____ on this _____ day of _____, A.D., 20__.

PRINCIPAL:

_____.

By: _____
Name: _____
Title: _____

Surety (full legal name):

Address:

By: _____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished and a Power of Attorney attached.]

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

NOTARY PUBLIC

FORM J: IRAN CONTRACTING CERTIFICATION

IRAN CONTRACTING CERTIFICATION

Section 2200 *et seq.* of the California Public Contract Code prohibits a person from submitting a proposal for a contract with a public entity for goods and services of \$1,000,000 or more if that person is identified on a list created by the Department of General Services (DGS) pursuant to Section 2203(b) of the California Public Contract Code. The list will include persons providing goods or services of \$20,000,000 or more in the energy sector of Iran and financial institutions that extend \$20,000,000 or more in credit to a person that will use the credit to provide goods or services in the energy sector in Iran. DGS is required to provide notification to each person that it intends to include on the list at least 90 days before adding the person to the list. In accordance with Section 2204 of the California Public Contract Code, the undersigned hereby certifies that

1. It is not identified on a list created pursuant to Section 2203(b) of the California Public Contract Code as a person engaging in investment activities in Iran described in Section 2202.5(a), or as a person described in Section 2202.5(b), as applicable; or
2. It is on such a list but has received permission pursuant to Section 2203(c) or (d) to submit a proposal in response to the Request for Proposals to Design and Construct the I-405 Improvement Project issued by Orange County Transportation Authority.

Note: Providing a false certification may result in civil penalties and sanctions.

Date: _____

Entity: _____

Signature: _____

Title: _____

(This Exhibit is required from the Prime only.)

**FORM K: PUBLIC RECORDS ACT INDEMNIFICATION – PROPOSAL
DOCUMENTS**

PUBLIC RECORDS ACT INDEMNIFICATION – PROPOSAL DOCUMENTS

By signing below, the Offeror agrees as follows regarding its Proposal:

If Authority or the Commission receive a Public Records Act request (Government Code sections 6250 et seq.) which seeks any portion of Offeror's proposal that the Offeror has marked as "confidential", "trade secret", "proprietary", "not subject to disclosure", or similar designation (the "PRA Documents"), the Authority and/or Commission will notify the Offeror of the request. The Offeror shall, within three business days of such notification from the Authority and/or Commission, inform the Authority and/or Commission as to whether it desires the PRA Documents to be withheld, and shall thereafter timely provide a legal basis for each such requested withholding. If the Authority and/or Commission determine to withhold the PRA Documents, Offeror shall indemnify and defend Authority and/or Commission, as applicable, from any and all costs or liabilities resulting from such withholding including, but not limited to, attorney fees and court costs. Offeror shall pay all costs, immediately as they come due, pertaining to any action under the Public Records Act related to any portion of Offeror's proposal marked or designated as described above, and withheld by Authority and/or Commission, as applicable. If the Offeror fails to notify the Authority or Commission in writing within three business days, and to timely provide a legal basis for the withholding of documents, Offeror agrees that Authority and/or Commission shall release and disclose Offeror records, notwithstanding any marking or designation of the PRA Documents.

In no case shall Authority or Commission be liable for any inadvertent disclosure of any Offeror proposal documents, or any disclosure made by Authority and/or Commission upon a good faith belief that disclosure is required by law, or in the event Offeror has failed to notify the Authority and/or Commission in writing of its desire to withhold the PRA Documents within three business days and/or to timely provide a legal basis for the withholding of documents, regardless of any marking or designation of such PRA Documents, and Offeror waives any claims it may have had related to such disclosure.

Official, legal name of Offeror (Type or Print) offering the Proposal

Print Name: _____

Title: _____

Signed by: _____

Date: _____

FORM L: OFFEROR RECENT CLIENT LIST

Offeror Recent Client List

(For most recent three years)

[illegible]

FORM M: REFERENCE FORMS

Reference Forms Part 1

Form M Part 1
BOS Implementation and Maintenance

Offeror shall use this attachment to clearly demonstrate how Offeror meets the minimum qualification requirements for Proposals with regard to Offeror project experience. Each reference provided may be contacted by the Agencies. Copy this form as needed to comply with the requirements outlined in the RFP for the Implementation and Maintenance Phase minimum qualifications. References must be from third party agency or company for whom Offeror has performed similar services.

Offeror's Name:

Please check off which qualifications requirement this reference is intended to address (you may check more than one box to cover multiple requirements as long as the explanation below is sufficiently detailed).

☐

Implementation

☐

Maintenance

Reference Company/Agency Name:		
Address:		
City:	State:	Zip Code:
Phone Number:	Fax Number:	
Project Manager Reference:		
E-mail:		
Alternate Reference*:		
Phone Number:	Fax Number:	
E-mail:		
Alternate Reference Role on Reference Project:		
*Must be completed in addition to the Project Manager reference		

Offeror's role on project and years of participation (mm/dd/yy to mm/dd/yy):

Project location, scope, cost, start / end dates:

Description of project functions and operations including size:

Relevant hardware, software and systems used:

Comparison to the Agencies' requirements:

Installed System or Maintenance documented performance, as applicable:

Form M Part 1
Operations

Offeror shall use this attachment to clearly demonstrate how Offeror meets the minimum qualification requirements for proposals with regard to Offeror project experience in Operations. Each reference provided may be contacted by the Agencies. Copy this form as needed to comply with the requirements outlined in the RFP for minimum qualifications. References must be from third party agency or company for whom Offeror has performed services.

Offeror's Name:

Reference Company/Agency Name:	
Address:	
City:	State: Zip Code:
Phone Number:	Fax Number:
Project Manager Reference:	
E-mail:	
Alternate Reference*:	
Phone Number:	Fax Number:
E-mail:	
Alternate Reference Role on Reference Project:	
*Must be completed in addition to the Project Manager reference	
Offeror's role on project and years of participation (mm/dd/yy to mm/dd/yy):	

Project location, scope, cost, start / end dates:

Description of project functions and operations performed, including size:

Relevant hardware, software and systems used:

Comparison to Agencies' requirements:

Operations documented performance:

Reference Forms Part 2

Form M Part 2

Offeror shall use this form to clearly show how Offeror meets the requirements set forth in the RFP for Key Personnel members. References must be provided from an outside agency or company and shall not be an internal Offeror reference. Each reference provided may be contacted to determine the respondent's ability to meet the Proposal requirements. Copy this form as needed to comply with the requirements of the RFP and the number of references cited. References must be from third party agency or company for whom Key Personnel has performed similar services.

Key Project Personnel Member _____

Proposed Position _____

Reference Company Name:	
Address:	
City:	State: Zip Code:
Phone Number:	Fax Number:
Project Manager:	
E-mail:	
Number of total years' experience of Key Personnel team member in similar role to one proposed for the Agencies:	
Reference Project:	
Key Team Personnel member role on reference project, including dates of participation and job description:	
Description of reference project location, scope, cost, start / end dates, etc.:	
Operational functionality and size of operations (accounts, transactions; notices...)	
Key Team Personnel member's major contributions and highlights:	
Key Team Personnel involved and role who are also proposed on the Agencies' project:	

FORM N: LIST OF SUBCONTRACTORS

List of Subcontractors

Please duplicate this page as necessary to provide the requested information.

	SUBCONTRACTOR	SUBCONTRACTOR	SUBCONTRACTOR
Legal Name of Company			
Company Contact Name			
Company Address			
City, State, Zip Code			
Company Telephone No.			
Company Fax Number			
Company E-mail address			
Legal Name of Principal(s)			
Address of Principal(s)			
City, State, Zip Code			
Telephone No. of Principal(s)			
Fax Number of Principal(s)			
E-mail address of Principal(s)			
Corporate Number (if applicable)			
License Number (if applicable)			
Status of License (if applicable)			
Work to be Performed			
Committed Dollar Amount of Total Work			
Committed Percentage of Total Work			

By: _____
President or Vice President

Signature: (1) _____

Attest: _____
Secretary (or Assistant Secretary)

Signature: (2) _____

(Affix Corporate Seal)

FORM O: CONFORMANCE MATRIX

Instructions for Completing Conformance Matrix

- 1) The Offeror must complete and submit the Excel version of Form O: Conformance Matrix, which is provided with the RFP package.
- 2) The Matrix covers each of the requirements set forth in Exhibit B, Joint Scope of Work and Requirements.
- 3) Offerors shall not alter the Requirements Conformance Matrices in any way and must use the workbook provided. The Offeror shall submit a PDF version of the completed matrices in Proposal Section 4 of the Technical Proposal, in addition to submitting the Excel version of the matrix on CD, as directed in Proposal Section C.
- 4) The following are instructions for completion of the Requirements Conformance Matrix for Volume I Project Management, Volume III CSC Requirements, and Volume IV Performance Measures:
 - a) There are four columns in the matrix as follows:
 - i. **No.** (Column A): A sequential number that matches the requirement numbers in the Requirements.
 - ii. **Requirements** (Column B): Includes a listing of each requirement copied from the Requirements.
 - iii. **Compliance** (Column C): Offeror must select one of the two (2) response codes (Y/N) for each Requirement and enter it in this column as further detailed in item “b)” below.
 - iv. **Comments** (Column D): This field must be completed if the Compliance code is entered as “N = no” for the particular requirement in order to explain why the Offeror is not complying with the Requirements.
 - b) Offerors must complete the Compliance (Column C) in the following manner:
 - i. **Yes = Y**: Enter a “Y” in this column if the stated requirement will be met by the Offeror and included in its Proposal.
 - ii. **No = N**: Enter an “N” if the Offeror will not meet the associated stated requirement as part of its Proposal. If any row in the Compliance column is completed as “N” then Offeror must provide an explanation in the Comments (Column D) in the corresponding row. The comment field may reference information that is included elsewhere in the Proposal.
- 5) The following are instructions for completion of the Volume II BOS Requirements Conformance Matrix:
 - a) There are seven columns in the - Volume II BOS Requirements Conformance Matrix as follows:
 - i. **No.** (Column A): A sequential number that matches the requirement number in the Requirements.

- ii. Requirements (Column B): A description of each requirement.
- iii. Status (Column C): Offeror must select one of the four (4) response codes for each Requirement and enter it in this column as further detailed in item “b)” below.
- iv. Customer Name and Location, If Applicable (Column D): Offeror must indicate the Customer Name and Location where the functionality was deployed or implemented if the Requirement is identified as current or modified. If the software was deployed at more than one customer, the Customer Name and Location is only required for a single customer.
- v. Source (Column E): Indicate who will be providing the functionality; Offeror (P), subcontractor (S), third party (T), or not applicable
- vi. Subcontractor Name and/or 3rd Party Product/Vendor, If Applicable (Column F): If the functionality is provided by a subcontractor or third party then please enter the name of the party or product.
- vii. Comments (Column G): This field must be completed if the Status code is entered as “N = not provided” for the particular Requirement in order to explain why the Offeror is not complying with this Requirement.

b) Offerors must complete the Status (Column C) in the following manner:

- i. Base Product = B: Enter an “B” in this column if the Requirement described is already incorporated into the Offeror’s baseline system and is provided in the proposed BOS and CSC Operations Services for the 91 Express Lanes in Orange and Riverside Counties.
- ii. Base Modified = M: Enter an “M” in this column if the functionality exists and is provided in the proposed BOS and CSC Operations Services for the 91 Express Lanes in Orange and Riverside Counties but needs to be modified to meet the requirement.
- iii. New Development = D: Enter a “D” if the Offeror’s baseline system does not currently have the required functionality but the functionality will be provided in the proposed BOS and CSC Operations Services for the 91 Express Lanes in Orange and Riverside Counties and will be developed to meet the requirement.
- iv. Not Provided = N: Enter an “N” if the Offeror will not provide the functionality and will not meet the requirement as part of its Proposal. If any row in the Status column is completed as “N” then Offeror must provide an explanation in the Comments (column G) in the corresponding row. The comment field may reference information that is included elsewhere in the Proposal.

Volume I Project Management

No.	Requirements	Required Inputs	
		Compliance	Comments
		Y - Yes N - No	If "Compliance = N" then Proposer must provide an explanation in this column
1. PROJECT MANAGEMENT			
1.1 Project Management and Control			
	The Project is divided into two overlapping phases: The Implementation Phase (from Notice to Proceed until BOS Acceptance) and the Operations and Maintenance Phase (after commencement of CSC Operations through the end of the Agreement).		
1	The Contractor shall provide all management, supervisory, financial and operations staff, including qualified management, professional, technical and clerical personnel, to professionally design and implement the BOS and operate and administer the Agencies' operations in a manner that meets all required performance criteria. The Contractor shall put in place the organizational structure and staffing required to meet these Requirements.	Y	
2	The Contractor shall perform and provide all services in accordance with all applicable laws, rules, regulations, ordinances and in compliance with all applicable Agency policies. All Plans and procedures prepared by the Contractor shall be Approved by the Agencies, as set forth in these Requirements.	N	
1.2 Project Management Plan (PMP)			
	The Contractor shall develop and employ a Project Management Plan (PMP) in accordance with Project Management Institute (PMI) Project Management Body of Knowledge (PMBOK) latest edition that is sufficiently detailed to enable the Agencies to review and confirm that the Contractor has the necessary management, staff and controls in place to meet the Agreement Requirements		
	The PMP describes how the Contractor shall deliver, implement and manage the Project, including staffing, scheduling and communication procedures for controlling all correspondence, Submittals and other communications between the Contractor and the Agencies, as well as communications with other third-party entities. The PMP shall be in accordance with system engineering methodology wherever applicable.		
	The PMP shall include, but is not limited to:		
	· Project scope and key Deliverables, tracked using a numbered Contract Deliverables Requirements List (CDRL);		
	· a description of the staff management and organization of the Project; an organization chart; identification of Key Team Personnel and their associated responsibilities, and identification of the resources to be used in fulfilling the Requirements;		
	· a description of Project planning, documenting and reporting methods to be utilized, both for use within the Contractor's staff and externally with the Agencies;		
	· approach to issue management, including communication, escalation and resolution of Project issues with the Agencies;		
	· approach to communication management, including meeting schedules and team meetings;		
	· the format of the Implementation Phase monthly progress report;		
	· inclusion of the Approved Baseline Implementation Schedule;		
	· a description of the process for reporting and tracking the Approved Baseline Implementation Schedule and Project performance;		

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Volume I Project Management

No.	Requirements	Required Inputs	
		Compliance	Comments
		Y - Yes N - No	If "Compliance = N" then Proposer must provide an explanation in this column
3	· approach to change control management, consistent with Agreement Requirements, including a description of the process for documenting and submitting change requests, the Approval process and how the change control management approach will be integrated into day-to-day Project management;		
	· process for resolution if a change request scope and cost proposal is rejected by the Agencies;		
	· approach to document control, including utilizing the Contractor-provided Electronic Document Management System (EDMS) that is accessible to the Project team by username and password (the Agencies shall have the capability to download documents using this Software);		
	· approach to risk management, including communication, escalation and resolution of Project risks with the Agencies;		
	· approach to Quality Assurance and Quality Control;		
	· approach to Subcontractor management, including how issues with Subcontractors will be resolved in a timely manner;		
	· approach to procurement management which adheres to the Agencies' policies;		
	· approach to operational readiness including a Go-Live check list;		
	· documenting the invoice submission; invoice backup information; verification, and Approval process;		
	· a section with all Approved Project forms;		
	· approach to Project closeout and		
	· an emergency contact list.		
4	The Contractor shall provide as a part of the PMP and then maintain both a Contractor and Agencies contact list. The contact list shall include all Implementation Phase Key Team Personnel and backups, personnel title and areas of Project participation. The list will be superseded by Operations and Maintenance Phase documentation and processes.		
5	The Contractor shall develop and submit the PMP to the Agencies within 10 Business Days of the Agreement's Effective Date for review and Approval.		
6	The Contractor shall identify the tools and products used to manage the Project and the internal controls instituted by the Contractor to guarantee successful delivery of the Project.		
	The Contractor shall develop and submit communications procedures to the Agencies for review and Approval that address the following, including but not limited to:		
	· Correspondence – all correspondence shall be identified as to originator and designated receiver and contain the Agreement name and number;		
	· Document control – tracking of document versions and changes;		

Volume I Project Management

No.	Requirements	Required Inputs	
		Compliance	Comments
		Y - Yes N - No	If "Compliance = N" then Proposer must provide an explanation in this column
7	· Invoices – all invoices shall be submitted with accompanying backup information as required by the Agreement and consistent with the Agencies processes and invoicing and auditing policies. The Contractor shall work with the Agencies to develop the appropriate invoice and back-up materials as a part of the PMP development. The Contractor shall submit multiple invoices, with costs and any applicable Liquidated Damages divided by Agency based on the Price Proposal and Agencies direction. Contractor shall address costs that are netted out from the Contractors toll revenue payment to the Agencies, for example credit card fees and collections fees.		
	· Submittals – all Submittals shall be delivered as an enclosure to the Contractor's submittal letter. Each Submittal letter shall be limited to a single subject or item. The Contractor's letter shall identify the Agreement number, Agreement name and subject of the Submittal, CDRL name if applicable, and the version number.		
1.3 Coordination			
1.3.1. Coordination with ETTM System Contractors			
	The Contractor shall work with the ETTM System Contractors in the design, implementation and operations of the BOS as well as the management and operation of the CSC. The ETTM System Contractors are responsible for around-the-clock monitoring of the ETTM System and support of operations and operational staff with respect to the ETTM System. The Contractor shall nonetheless be responsible for the timely reporting of any issues or failures it has identified related to the ETTM System to both the ETTM System Contractors and the Agencies, and for cooperating with the ETTM System Contractors to resolve the issues as expeditiously as possible.		
8	The Contractor shall report any observed ETTM System anomalies and errors to the ETTM System Contractors via Cases; the Contractor shall track these issues through to timely resolution in coordination with the ETTM System Contractors.		
9	The Contractor shall select the appropriate priority level or level of urgency when reporting ETTM System errors to the ETTM System Contractors based on the levels identified in the Operations Plan. The Contractor shall make best efforts to ensure that critical and high-priority items are quickly and effectively communicated to the ETTM System Contractors within a time period agreed-to in the Operations Plan.		
10	The Contractor shall notify the Agencies of all issues and errors identified in the Operations Plan as requiring simultaneous notification to the Agencies.		
11	The Contractor shall participate in Coordination and Status meetings with the Agencies and the ETTM System Contractors as further described in Section 1.3.2.		

Volume II BOS Requirements

No.	Requirements	Required Inputs				
		Status	If Applicable	Source	If Applicable	Comments
		B-Base Product M-Base Modified D-New Development N-Not Provided*	Customer Name and Location	P-Proposer S-Sub T-Third Party NA-Not Applicable	Subcontractor Name and/or 3rd Party Product/Vendor	Comment required if "Not Provided*", optional otherwise.
1. BOS Requirements Introduction						
	The following subsections describe the Statement of Work and the Requirements for the Back Office System (BOS). These Requirements are numbered to track obligations per the Agreement and any changes which may occur during the Project. Many of the Requirements contain underlying lists of specific items and required database fields. The intent of these “including but not limited to” lists is to indicate to the proposer the intent and scope of the Requirement. During design, the naming and number of items and fields will vary; however, all items and fields shall be addresses by the BOS unless the Contractor is formally relieved of the Requirement by the Agencies.					
1.1 Global System Requirements						
	The global System Requirements define the overarching Requirements for the Hardware, Software and system comprising the production and non-production environments of the BOS.					
	The Contractor is encouraged to provide innovative solutions that simplify maintenance, security and the implementation of Upgrades and Enhancements. The Contractor is permitted to use cloud-based and/or premise-based solutions. The entire technical solution, all persons with access to the system and all Third-Party Service Providers and Business Partners must reside and perform the services within the continental United States.					
	The Agencies process more than one million Credit Card transactions per year, classifying it as a Level 2 Merchant by the Payment Card Industry (PCI) Standards Security Council. Because the global System Requirements also include Requirements for securing PII in accordance with California statutes, the Agencies’ privacy policy and National Institute of Standards and Technology (NIST) best practices for general information security.					
	Connecting the BOS to both the Agencies’ Electronic Toll and Traffic Management (ETTM) Systems, Interoperable Agencies inside and outside California and to Third-Party Service Providers and Business Partners requires a wide variety of external Interfaces. Providing for these Interfaces will require the Contractor to use existing Interface Control Documents (ICD) when applicable and develop new/more modern Interfaces at the Agencies’ direction.					
	A BOS-provided Performance Management and Monitoring System (PMMS) shall monitor the performance of the BOS and provide incident and work order management capabilities and data points for measuring the Contractor’s Operations and Maintenance Phase performance as further detailed in the Maintenance and Software Support Services section of these Requirements.					
1.1.1 Environments						
	The BOS shall include multiple environments as required to complete the design, development, integration, testing, delivery and Acceptance of the BOS and properly operate during the Operations and Maintenance Phase. It is the Contractor’s responsibility to provide additional Agency-Approved environments should the ones listed herein be insufficient for the Contractor to deliver the appropriate solution. The layouts of Corona CSC, WIC and Anaheim Processing Center/data center are provided in Attachment A: OCTA/RCTC Building Layouts.					

Volume II BOS Requirements

No.	Requirements	Required Inputs				Comments
		Status	If Applicable	Source	If Applicable	
		B-Base Product M-Base Modified D-New Development N-Not Provided*	Customer Name and Location	P-Proposer S-Sub T-Third Party NA-Not Applicable	Subcontractor Name and/or 3rd Party Product/Vendor	
1	The operating environment of the BOS shall include, but not be limited to:					
	· the primary BOS;	B				
	· a secondary instance of the BOS to be used for Disaster Recovery (DR) and to support Business Continuity;	M				
	· telephony system;	D				
	· the Interactive Voice Response (IVR);	N				
	· Automatic Call Distribution (ACD);					
	· systems for all servicing all channels of customer communication;					
	· Desktop Environments installed at the CSC and WIC facilities;					
	· network and communications elements as detailed in Attachment B: BOS Network and Server Room Layout;					
	· all required Interfaces and					
	· a data warehouse (optional).					
2	The primary BOS server environment shall be located at one or a combination of the following locations:					
	· the data center at 180 North Riverview Drive, Suite 200 Anaheim CA 92808;					
	· hosted at a Tier 3 data center facility;					
	· hosted on a well-established cloud service provider.					
3	The primary BOS server environment shall have a dedicated infrastructure such that:					
	· if installed on-premise at an Agencies facility the entire infrastructure is dedicated to the Agencies BOS implementation. Refer to Attachment A: OCTA/RCTC Building Layouts for information about the Agencies' on-premise data center.					
	· if hosted at a Tier 3 data center facility or by a well-established cloud service provider, the Agencies dedicated BOS application shall run on dedicated virtual machines and/or containers such that only upgrades to the data center/cloud infrastructure and the Agencies BOS application would potentially affect the uptime of the BOS and there is no possibility of functional or infrastructure upgrades required to service other toll customer's applications would cause any downtime or affect the BOS in any way.					
4	The Contractor shall be responsible for all modifications to the data center, CSC and WIC facilities to accommodate the BOS and the Contractor's preferred operational approach, including but not limited to: (Note: The Existing BOS and CSC Provider's BOS will remain collocated in the data center for a period of time beyond Go-Live and the transition to the new BOS and CSC Operations.)					
	· data center (see data enter section below for additional detail);					
	· Network equipment (see network section below for more detail);					
	· CSC offices, cubicles and space layouts;					
	· CSC power and wiring;					
	· security system modifications and					
	· CSC Surveillance CCTV system modifications.					

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Volume II BOS Requirements

No.	Requirements	Required Inputs				Comments
		Status	If Applicable	Source	If Applicable	
		B-Base Product M-Base Modified D-New Development N-Not Provided*	Customer Name and Location	P-Proposer S-Sub T-Third Party NA-Not Applicable	Subcontractor Name and/or 3rd Party Product/Vendor	
5	The operating environment of the BOS shall include systems provided and maintained on-site including Desktop Environments, associated telephony elements and all required office equipment and installed at the following locations (refer to Attachment B: OCTA/RCTC Building Layouts for detail about the CSC and WIC locations and layouts):					
	· Corona CSC/WIC (primary CSC)- 301 Corporate Terrace Circle, Corona, CA 92879;					
	· Anaheim Processing Center/CSC- 180 North Riverview Drive, Suite 200 Anaheim CA 92808;					
	· OCTA Store (WIC at OCTA building) – 600 S. Main Street, Orange CA 92868; and					
	· Data Center - 180 North Riverview Drive, Suite 200 Anaheim CA 92808.					
6	The Contractor shall ensure the BOS is fully operational in accordance with the Performance Measures described in these Requirements, for the Implementation and Operations and Maintenance Phases.					
7	The Contractor shall provide all computing environments required to sustain the day-to-day operations of the BOS by the Go-Live date, including but not limited to:					
	· a production environment located within the continental United States;					
	· a DR environment at a secondary location within the continental United States in a different time zone, or cloud-based equivalent;					
	· a training environment located at the Corona CSC location;					
	· a test environment and					
	· a development environment.					
8	The Contractor shall not allow access to PII to any individuals or entities outside of the U.S. Individuals and entities outside of the U.S. shall only have access to the development environment with no PII.					
9	The Agencies shall have logon access to all BOS environments.					
10	The Contractor shall keep all BOS environments current with all major releases of operating systems, databases, Software and firmware. Releases shall not be more than one release behind the manufacturer's latest major release unless Approved by the Agencies. The Contractor shall also make the necessary Software changes required to ensure compatibility with the evolving IT environment.					
11	With the exception of the development and test environment, which may change as part of testing and development cycles, the Contractor shall keep operating systems, databases, Software and firmware consistent across all environments, including, but not limited to configuration and patch level.					
12	The test environment shall be sufficiently sized to successfully test Software changes and their effect on the production environment, including load and stress testing.					